2005

SENATE
COMMERCE

COMMITTEE
MINUTES

MEMBERSHIP

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2005-2006 Biennium

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Walker Reagan General Commerce & Financial Regulation Issues	733-2578 Room 201, LOB
Steve Rose Utilities Regulatory Issues	733-2578 Room 545, LOB
Dot Waugaman Committee Assistant	715-2525 Room 1119, LOB

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0027	Glazier	ESC HEARINGS ACCOMMODATE BUSINESS ACTIVITIES.	SR	Ch. SL 2005-122	03-16-05	06-21-05
[redacted]99	Gibson	AMEND WORKERS' COMP ACT.	*S	Pres. To Gov. 8/24/2005	08-10-05	08-12-05
H0237	Coates	REVISE MORTGAGE LENDING ACT.	*SR	Ch. SL 2005-316	08-11-05	08-12-05
H0392	LaRoque	AMEND DEFINITION OF MALT BEVERAGE IN ABC LAW.	*SR	Ch. SL 2005-277	05-09-05	07-06-05
H0576	Tolson	PROCUREMENT OF PROFESSIONAL SERVICES.	*S	Pres. To Gov. 8/24/2005	04-05-05	08-10-05
H0630	Goforth	MANUFACTURED HOMES ESCROW ACCOUNTS.	*S	Pres. To Gov. 8/24/2005	05-17-05	08-11-05
H0653=	Holliman	CREDIT INSURANCE CHANGES.-AB	*SR	Ch. SL 2005-181	06-06-05	06-30-05
H0654	Holliman	CONFIDENTIAL INSURANCE MKT./ FINANCIAL DOC.-AB	*SR	Ch. SL 2005-206	05-02-05	06-29-05
H0655	Holliman	BETTER INSURANCE/ ANNUITY DISCLOSURE.-AB	*SR	Ch. SL 2005-234	05-02-05	06-29-05
H0657	Holliman	PRODUCER COMP. TRANSPARENCY AND BROKER DUTY.-AB	*S	Ref To Com On Commerce	05-31-05	
$ H0658	**Holliman**	**CODE OFFICIALS PROFESSIONALISM.-AB**	***SR**	**Ch. SL 2005-102**	**05-11-05**	**06-08-05**
H0660	Holliman	INSURANCE FINANCIAL CHANGES.-AB	*SR	Ch. SL 2005-215	04-21-05	06-29-05
H0665=	Cole	AMEND HOUSE MOVER LAWS.-AB	*S	Pres. To Gov. 8/23/2005	04-20-05	08-10-05
[redacted]69	Cole	OVERSIZE/OVERWEIGHT VEHICLE CHANGES.-AB	*S	Pres. To Gov. 8/23/2005	05-09-05	08-10-05
[redacted]669	Cole	OVERSIZE/OVERWEIGHT VEHICLE CHANGES.-AB	*S	Pres. To Gov. 8/23/2005	08-11-05	08-12-05
H0670	Cole	CDL/FEDERAL COMPLIANCE	*S	Pres. To Gov. 8/23/2005	05-16-05	08-10-05
H0672	Holliman	REDUCE HOLDING PERIOD FOR UNCLAIMED PROPERTY.-AB	*SR	Ch. SL 2005-132	05-12-05	06-08-05
H0673	Holliman	INTERSTATE INSURANCE PRODUCT REG. COMPACT.-AB	*SR	Ch. SL 2005-183	05-19-05	06-30-05
H0676	Tolson	GOV'T E-COMMERCE/ APPROVAL OF FEES.	SR	Ch. SL 2005-92	04-27-05	06-14-05
H0678	Tolson	UNC SERVICE CONTRACTS	*SR	Ch. SL 2005-125	04-19-05	06-21-05
H0687	Gibson	PIRATING MOVIES.	*SR	Ch. SL 2005-301	07-20-05	08-10-05
H0733	Holliman	LICENSE INSURANCE STATISTICAL ORGANIZATIONS.-AB	*SR	Ch. SL 2005-210	05-09-05	06-29-05
H0734	Holliman	NAVASSA ZONING JURISDICTION.	*S	Ref To Com On Rules, Calendar, and Operations of the House	05-11-05	07-21-05
H0735	Holliman	ACCIDENT & HEALTH INSUR./RATE STABILIZATION.-AB	*S	Pres. To Gov. 8/23/2005	05-09-05	08-11-05

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H0737	Holliman	HEALTH INSURANCE CHANGES.	*SR	Ch. SL 2005-223	05-02-05	07-05-05
[redacted]52=	Hill	NCSU DAIRY SALES.-AB	SR	Ch. SL 2005-20	04-11-05	04-19-05
[redacted]68	Howard	2005 OMNIBUS LABOR LAW CHANGES.-AB	*S	Pres. To Gov. 8/ 24/2005	05-24-05	08-11-05
H0786	Cole	MV DEALER TECHNICAL CORRECTIONS.-AB	*SR	Ch. SL 2005-99	05-12-05	06-14-05
H0810=	Gillespie	AMEND CERTAIN LAND SURVEYOR LICENSURE REQS.	SR	Ch. SL 2005-296	05-02-05	08-10-05
H0813	Allred	PROHIBITING SOLICITATIONS ON STATE HIGHWAYS.	*SR	Ch. SL 2005-310	04-21-05	08-11-05
H0818	Sutton	WORKERS COMP./ DRIVERS' STATUS.	S	Ref To Com On Commerce	05-18-05	
H0859=	Brubaker	CONTINUING EDUCATION OF MORTGAGE BROKERS.	S	Ref To Com On Commerce	04-05-05	
H0891	Alexander	MASTER KEYS/LOCK-PICKING DEVICES REGULATED.	*S	Pres. To Gov. 8/ 23/2005	04-19-05	08-10-05
H1025	Luebke	WINEMAKING ON PREMISES PERMIT.	S	Re-ref Com On Finance	05-25-05	08-12-05
H1097	Gibson	DESIGN/BUILD/OPERATE CONTRACT SLUDGE MGT.	*SR	Ch. SL 2005-176	05-16-05	06-21-05
H1168	Church	PROHIBIT DECEPTIVE MARKETING/BANKING SERVICES.	*SR	Ch. SL 2005-162	05-09-05	06-22-05
H1174	Ross	ABC PERMIT ISSUANCE AND COMPLIANCE.	*S	Pres. To Gov. 8/ 23/2005	05-09-05	08-10-05
H1226	Culpepper	INSPECTION OF CORRECTIONAL FACILITIES.	SR	Ch. SL 2005-98	05-23-05	06-14-05
[redacted]236	Holliman	INSURANCE BD. OF GOVERNORS MEMBERSHIP.	*SR	Ch. SL 2005-242	05-31-05	07-05-05
H1240	Culpepper	VACATION RENTAL ACT AMENDMENTS.	*SR	Ch. SL 2005-292	06-01-05	08-10-05
H1261	Underhill	WIRELESS TELEPHONE SERVICE.	*S	Pres. To Gov. 8/ 24/2005	05-31-05	08-10-05
H1271	Culpepper	AMEND AUCTIONEER LICENSING LAWS.	*SR	Ch. SL 2005-330	05-16-05	08-11-05
H1284	Culpepper	IMPROVE REAL ESTATE LICENSING LAW.	*S	Pres. To Gov. 8/ 23/2005	06-30-05	08-10-05
H1291	Allred	ELIMINATE CONTINUING ED. REQ'S./LOCKSMITHS.	S	Ref To Com On Commerce	06-06-05	
H1299	Bordsen	MOTOR VEHICLE REPAIRS/ CLARIFY COST OF REPAIR.	*SR	Ch. SL 2005-304	05-17-05	08-10-05
H1320	Hackney	DISCLOSE MONETARY TRANSMISSIONS.	SR	Ch. SL 2005-104	05-11-05	06-08-05
H1332	Saunders	ELECTRONIC PURCHASES AND SALES.	*SR	Ch. SL 2005-227	05-16-05	07-05-05
H1353	LaRoque	MUNI ELECTRIC SERVICE CUSTOMERS/LENIOR COUNTY.	*S	Re-ref Com On Rules and Operations of the Senate	06-06-05	07-05-05
H1388	Gibson	EXCLUDE INTERNET	*S	Ref To Com On	06-06-05	

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		SALES/AUCTION ACTIVITIES.		Commerce		
[redacted]89	Gibson	CLARIFY WINERIES WHOLESALE LICENSE.	SR	Ch. SL 2005-340	05-11-05	08-11-05
H1390	Gibson	AMEND ABC TRANSPORTATION LIMIT.	SR	Ch. SL 2005-335	05-11-05	08-11-05
H1392	Glazier	FAILURE TO RETURN HIRED MOTOR VEHICLES.	*SR	Ch. SL 2005-182	06-06-05	06-22-05
H1411	Luebke	UPDATE CONSUMER CREDIT SALES CAP.	*SR	Ch. SL 2005-338	05-17-05	08-12-05
H1416	Haire	AN ACT TO AMEND THE ABC ELECTION LAW.	SR	Ch. SL 2005-336	06-06-05	08-10-05
H1429	Harrell	WINE SHIPPER FEE/WINE PRIMARY SOURCE	*S	Pres. To Gov. 8/ 23/2005	06-30-05	07-12-05
H1464	McMahan	REPEAL SUNSET ON UNC DESIGN CONTRACTS/ REPORT.	*SR	Ch. SL 2005-300	05-23-05	08-10-05
H1465	Hackney	DISPOSAL IN LANDFILLS/ ADDL. BANS.	*S	Pres. To Gov. 8/ 23/2005	05-23-05	06-27-05
H1468	Saunders	TELECOMMUNICATION SERVICE PROVIDERS.	*S	Pres. To Gov. 8/ 23/2005	05-25-05	08-11-05
H1469	Saunders	UTILITIES ACCESS TO PUBLIC RIGHTS-OF-WAY.	*SR	Ch. SL 2005-286	05-31-05	07-05-05
H1500	Gibson	WINE-TASTING/WINERIES WHOLESALE LIC. CHANGES.	*S	Pres. To Gov. 8/ 23/2005	05-12-05	07-06-05
H1518	Hackney	ABC LICENSEES TO RECYCLE BEVERAGE CONTAINERS.	*S	Pres. To Gov. 8/ 23/2005	06-06-05	08-11-05
H1522	McComas	AMEND STATE PORTS ENABLING LEGISLATION.	S	Ref To Com On Commerce	06-06-05	
[redacted]39	Daughtridge	UNC/AMEND UMSTEAD ACT.	*S	Pres. To Gov. 8/ 24/2005	06-06-05	08-10-05
H1541	Earle	HOMEOWNER ASSOCIATION AMENDMENTS.	*S	Pres. To Gov. 8/ 24/2005	06-06-05	08-11-05
H1582	Saunders	CONFIRM ROBERT K. KOGER/UTILITIES COMMISSION.	*SR	Ch. Res 2005-38	06-13-05	06-14-05
S0002	Julia Boseman	NO VIOLENT/OBSCENE VIDEO GAME SALES TO MINOR.	*S	Re-ref Com On Judiciary II	01-27-05	04-19-05
S0009	David F. Weinste	ECONOMIC DEVELOPMENT HORSE RACE.	*S	Re-ref Com On Commerce	01-31-05	02-22-05
S0009	David F. Weinste	ECONOMIC DEVELOPMENT HORSE RACE.	*S	Re-ref Com On Commerce	03-02-05	
S0044	Robert Pittenger	HEALTH CARE LIABILITY CLAIMS.	S	Ref To Com On Commerce	02-03-05	
S0178	Jerry W. Tillman	AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR.	*SR	Ch. SL 2005-131	02-22-05	04-06-05
S0189	William R. Purce	ALL-TERRAIN VEHICLE REGULATION.	*SR	Ch. SL 2005-282	02-23-05	04-27-05
S0196=	Linda Garrou	AMEND TOBACCO RESERVE FUND - 1.	S	Ref To Com On Commerce	02-23-05	
S0247	John Snow	REGULATION OF HELIPORTS.	*S	Re-ref Com On Judiciary III	05-17-05	05-31-05

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S0255	John H. Kerr III	FINANCE LAW CHANGES 1.	S	Re-ref Com On Commerce	06-23-05	
S0277	Walter H. Dalton	MOTOR VEHICLE SELF-INSURERS.	*S	Ref To Com On Insurance	05-25-05	05-31-05
S0346	Robert Lee Hollo	MISCELLANEOUS CHANGES/ MFG. HOME LAWS.	S	Ref To Com On Commerce	03-03-05	
S0384=	Hamilton C. Hort	NC ENERGY POLICY REWRITE.	S	Ref To Com On Commerce	03-07-05	
S0402=	Eleanor Kinnaird	WATER/UTILITIES SAVINGS IN GOVT. FACILITIES.	S	Ref To Com On State Government	03-07-05	08-11-05
S0426=	R. C. Soles, Jr.	CONFIRM HOWARD LEE TO UTILITIES COMMISSION.	SR	Ch. Res 2005-18	03-09-05	03-15-05
S0441=	John A. Garwood	ASHE CO./ WIND-POWERED GENERATION.	S	Re-ref Com On Rules and Operations of the Senate	03-09-05	06-02-05
S0445=	Julia Boseman	INSURANCE PREMIUM DISCOUNT/PREVENTION COURSE.	S	Re-ref Com On Commerce	03-10-05	04-28-05
S0445=	Julia Boseman	INSURANCE PREMIUM DISCOUNT/PREVENTION COURSE.	S	Re-ref Com On Commerce	05-11-05	
S0476=	Malcolm Graham	REGULATE SALE OF MALT BEVERAGE KEGS.	S	Ref To Com On Commerce	03-10-05	
S0494	David W. Hoyle	REGULATE TELECOMMUNICATIONS SERVICES.	*SR	Ch. SL 2005-95	05-12-05	05-24-05
S0512	Daniel G. Clodfe	ELECTRIC SERVICE CONFLICTS.	*SR	Ch. SL 2005-150	05-11-05	05-31-05
S0522	Daniel G. Clodfe	EXTEND BUILDING CODE PILOT PROGRAM.	S	Ref To Com On Ways and Means	03-15-05	05-10-05
$ S0534	**Philip E. Berger**	**HIGH RISK INSURANCE POOL.**	**S**	**Ref to Commerce. If fav, re-ref to Appropriations/ Base Budget**	**03-15-05**	
S0547=	Tony Rand	AMEND CERTAIN LAND SURVEYOR LICENSURE REQS.	S	Ref To Com On Commerce	03-15-05	
S0576=	Walter H. Dalton	PRODUCER COMP. TRANSPARENCY AND BROKER DUTY.-AB	S	Ref To Com On Commerce	03-16-05	
S0577=	Walter H. Dalton	UNAUTHORIZED INSURER MISCONDUCT.-AB	SR	Ch. SL 2005-209	03-16-05	04-05-05
S0578=	Walter H. Dalton	INTERSTATE INSURANCE PRODUCT REG. COMPACT.-AB	S	Ref To Com On Commerce	03-16-05	
S0579=	Walter H. Dalton	CREDIT INSURANCE CHANGES.-AB	S	Ref To Com On Commerce	03-16-05	
S0580=	Walter H. Dalton	INSURANCE FINANCIAL CHANGES.-AB	S	Ref To Com On Commerce	03-16-05	
S0584=	Charles W. Alber	NCSU DAIRY SALES.-AB	S	Ref To Com On Commerce	03-16-05	
S0590	Katie G. Dorsett	CONSUMER CREDIT COUNSELING/DEBT MANAGEMENT.	*S	Pres. To Gov. 8/ 30/2005	03-16-05	05-18-05

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S0598=	Clark Jenkins	COMMERCIAL DRIVERS LICENSE CHANGES.-AB	S	Ref To Com On Commerce	03-16-05	
S0601=	Clark Jenkins	AMEND HOUSE MOVER LAWS.-AB	S	Ref To Com On Commerce	03-16-05	
S0602=	Clark Jenkins	LIABILITY INSURANCE FOR STATE EMPLOYEES.	*S	Passed 2nd & 3rd Reading	05-31-05	06-01-05
S0603	Clark Jenkins	LIGHT-DUTY ROAD EXEMPTION-BUILDING SUPPLIES.	S	Ref To Com On Transportation	03-16-05	04-28-05
S0615=	Scott Thomas	INSURANCE TECHNICAL CORRECTIONS.	S	Ref To Com On Insurance	03-17-05	04-28-05
S0620	David W. Hoyle	PERPETUAL CARE FUND CHANGES.	S	Ref To Com On Commerce	03-17-05	
S0621=	Katie G. Dorsett	REDUCE HOLDING PERIOD FOR UNCLAIMED PROPERTY.-AB	S	Ref To Com On Commerce	03-17-05	
S0625=	Scott Thomas	IMPROVE MANAGED CARE STATUTES.-AB	S	Ref To Com On Commerce	03-17-05	
S0626=	Scott Thomas	HIPAA COMPLIANCE AND FAIRNESS.-AB	*SR	Ch. SL 2005-224	03-17-05	04-05-05
S0627=	Scott Thomas	IMPROVE HEALTH INSURANCE UNDERWRITING.-AB	S	Ref To Com On Commerce	03-17-05	
S0644	David W. Hoyle	EXEMPT BANKING COMM. STAFF FROM SPA.	*SR	Ch. SL 2005-284	03-17-05	03-29-05
S0647=	David W. Hoyle	CLARIFY MV DEALER FRANCHISE LAWS.	S	Ref To Com On Commerce	03-17-05	
S0656=	Clark Jenkins	MV DEALER TECHNICAL CORRECTIONS.-AB	S	Ref To Com On Commerce	03-17-05	
S0664=	Fletcher L. Hart	SMALL BUSINESS REGULATORY IMPROVEMENT ACT.	*S	Re-ref Com On Appropriations/ Base Budget	03-17-05	04-27-05
S0685	Stan Bingham	REVISE PROFESSIONAL EMPLOYER ORGANIZATION ACT.	*SR	Ch. SL 2005-124	03-21-05	03-24-05
S0715=	Walter H. Dalton	LICENSE INSURANCE STATISTICAL ORGANIZATIONS.-AB	S	Ref To Com On Commerce	03-21-05	
S0718	David W. Hoyle	MODULAR HOME SALES/ INSTALLATION REQUIREMENTS.	S	Ref To Com On Commerce	03-22-05	
S0721=	David W. Hoyle	WORKERS' COMP./SELF-INSURED GUARANTY ASSOC.	S	Ref To Com On Commerce	03-22-05	
S0727=	Philip E. Berger	CONFIDENTIAL INSURANCE MKT./ INSURANCE DOC.	S	Ref To Com On Commerce	03-22-05	
S0729=	David W. Hoyle	CLARIFY USED MV INTEREST CHARGES UNDER RISA.	S	Ref To Com On Commerce	03-22-05	05-26-05
S0730	David W. Hoyle	CLARIFY MV DEFINITIONS AND REMEDIES.	S	Ref To Com On Commerce	03-22-05	
S0735	Tony Rand	AMEND DEFINITION OF MALT BEVERAGE IN ABC LAW.	S	Ref To Com On Commerce	03-22-05	

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S0739	Tony Rand	HEALTH INSURANCE MARKET/SMALL BUSINESSES.	S	Ref To Com On Commerce	03-22-05	
43=	Tony Rand	UNC CONSTRUCTION SPECIFICATIONS.-AB	S	Ref To Com On Commerce	03-22-05	
S0756	Martin L. Nesbit	REVISE BUILDING COMMISSION MEMBERSHIP.	*S	Ref To Com On Commerce	03-22-05	05-31-05
S0757	Martin L. Nesbit	ESC OMNIBUS ACT.	*S	Pres. To Gov. 8/ 24/2005	03-22-05	05-31-05
S0758=	Martin L. Nesbit	UNC/AMEND UMSTEAD ACT.	S	Ref To Com On Commerce	03-22-05	
S0764	William R. Purce	HEALTH INSURANCE/ ASSIGNMENT OF BENEFITS.	S	Ref To Com On Commerce	03-22-05	
S0783	James Forrester	REPORT HACKER/ FRAUDULENT ACCESS TO ID DATA.	S	Re-ref Com On Judiciary I	03-23-05	05-03-05
S0787=	David W. Hoyle	CONTINUING EDUCATION OF MORTGAGE BROKERS.	S	Ref To Com On Commerce	03-23-05	
S0794=	Scott Thomas	VACATION RENTAL ACT AMENDMENTS.	S	Re-ref Com On Commerce	03-28-05	
S0795	Scott Thomas	INSTALLING MV PARTS AND AIR BAGS.	S	Ref To Com On Commerce	03-23-05	
S0823	Clark Jenkins	INSURANCE DISCOUNT FOR SAFE DRIVING CLASS.	*S	Re-ref Com On Commerce	03-23-05	05-02-05
S0823	Clark Jenkins	INSURANCE DISCOUNT FOR SAFE DRIVING CLASS.	*S	Re-ref Com On Commerce	05-03-05	
S0828	Kay R. Hagan	AMEND WINE SALES AND PRODUCTION LAWS.	*S	Ref to the Com on Alcoholic Beverage Control and, if favorable, to the Com on Finance	03-23-05	05-25-05
S0833	Eleanor Kinnaird	PROTECT CONSUMERS/ADS FOR LODGING.	S	Ref To Com On Commerce	03-23-05	
S0847=	Vernon Malone	AMEND WARRANTY/ SERVICE AGREEMENT CO. LAWS.	S	Ref To Com On Commerce	03-23-05	
S0848=	Vernon Malone	ACCIDENT & HEALTH INSUR./RATE STABILIZATION.	S	Ref To Com On Commerce	03-23-05	
S0863	Doug Berger	LOSS OF WORKERS' COMP FOR FRAUD.	S	Re-ref Com On Commerce	04-19-05	
S0864	Doug Berger	WORKERS' COMP/INJURY TO EXTREMITIES.	S	Re-ref Com On Commerce	04-19-05	
S0865	Doug Berger	WORKERS' COMP/ EMPLOYEE WORK INCENTIVE.	S	Re-ref Com On Commerce	04-19-05	
S0866	Doug Berger	INCREASE CAP ON LOSS OF WORKERS' ORGAN.	S	Re-ref Com On Commerce	04-19-05	
S0879	Linda Garrou	ECONOMIC DEVELOPMENT - NC PRODUCT PREFERENCE.	*SR	Ch. SL 2005-213	03-23-05	05-02-05
S0881	Linda Garrou	LAPSE IN LIABILITY INSURANCE.	*S	Ref To Com On Insurance	03-23-05	06-29-05

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S0884	Jerry W. Tillman	STATE TRADITIONAL POTTERY BIRTHPLACE.	*SR	Ch. SL 2005-78	03-23-05	04-28-05
S0895	Tony Rand	R/E COMMISSION AND BROKER LAW CHANGES.	*S	Pres. To Gov. 8/ 24/2005	03-23-05	05-31-05
S0907	Katie G. Dorsett	MINORITY BUSINESS CERTIFICATION.	*SR	Ch. SL 2005-270	03-24-05	05-02-05
S0921=	Jim Jacumin	CONSUMER CREDIT PROTECTION ACT.	S	Re-ref Com On Judiciary I	03-24-05	05-04-05
S0922	Jim Jacumin	SMALL BUSINESS FRIENDLY REGULATION.	S	Ref To Com On Commerce	03-24-05	
S0923	Daniel G. Clodfe	LABOR/MANDATORY LUNCH BREAK.	S	Ref To Com On Commerce	03-24-05	
S0924	Daniel G. Clodfe	ELIMINATE UNEMPLOYMENT WAITING PERIOD.	S	Ref To Com On Commerce	03-24-05	
S0937=	Janet Cowell	DESIGN/BUILD/OPERATE CONTRACT SLUDGE MGT.	S	Ref To Com On Commerce	03-24-05	
S0947	David W. Hoyle	REGULATE DEFERRED DEPOSITS.	S	Ref To Com On Commerce	03-24-05	
S0952=	Jeanne H. Lucas	MOTOR VEHICLE REPAIR CONSUMER PROTECTION.	S	Ref To Com On Commerce	03-24-05	
S0962=	William R. Purce	MIGRANT WORKER HOUSING ACT.	S	Ref To Com On Commerce	03-24-05	
S0969	Doug Berger	AMEND WORKERS' COMP. ACT -3.	S	Re-ref Com On Commerce	04-27-05	
S0974	Charlie S. Danne	ALCOHOL SALES-CAMPUS PERFORMING ARTS CENTERS.	*SR	Ch. SL 2005-327	03-24-05	05-10-05
S0979=	Vernon Malone	BETTER INSURANCE/ ANNUITY DISCLOSURE.	S	Ref To Com On Commerce	03-24-05	
S0984	David W. Hoyle	AMEND WORKERS' COMPENSATION ACT.	S	Ref To Com On Commerce	03-24-05	
S0986=	David W. Hoyle	MOTOR FUEL MARKETING ACT.	S	Ref To Com On Commerce	03-24-05	
S1008	Kay R. Hagan	911 CENTERS FUND ACCESS.	S	Ref To Com On Commerce	03-24-05	
S1043	Daniel G. Clodfe	WORKERS' COMP/ AGRICULTURE WORKERS.	S	Ref To Com On Commerce	03-24-05	
S1055=	Jeanne H. Lucas	GLASS TECHNICIANS LICENSURE.	S	Ref to Commerce. If fav, re-ref to Finance	03-24-05	
S1056=	Jeanne H. Lucas	LICENSURE/MOTOR VEH. REPAIR SHOPS/COLL. REP.	S	Ref to Commerce. If fav, re-ref to Finance	03-24-05	
S1082	Philip E. Berger	HEALTH BENEFITS FOR DISABLED LOCAL LEO.	S	Ref To Com On Commerce	03-24-05	
S1100=	Martin L. Nesbit	MENTAL HEALTH PARITY.	S	Ref To Com On Commerce	03-24-05	
S1112	Doug Berger	AMEND WORKERS' COMP. ACT -2.	S	Re-ref Com On Commerce	04-27-05	
S1116	Charles W. Alber	AMEND TOBACCO RESERVE/ BAN FLAVORED CIGARETTES.	S	Ref To Com On Commerce	03-24-05	
S1120=	Tony Rand	IMPROVE REAL ESTATE LICENSING LAW.	S	Ref To Com On Commerce	03-24-05	
S1138	Andrew C. Brock	MOTOR VEHICLE GLASS	S	Ref To Com On	03-24-05	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		REPAIRS.		Commerce		
S1140	Andrew C. Brock	COMPETITIVE BIDDING ON LEASED OFFICE SPACE.	S	Ref To Com On Commerce	03-24-05	
S1141=	Andrew C. Brock	NO COMPREHENSIVE DEDUCTIBLE ON WINDSHIELDS.	S	Ref To Com On Commerce	03-24-05	
S1151	Doug Berger	AMEND WORKERS' COMP. ACT -1.	S	Re-ref Com On Commerce	04-27-05	
S1160	Tom Apodaca	MOTOR VEHICLE PROTECTION PRODUCTS.	S	Ref To Com On Commerce	03-24-05	
S1172	R. C. Soles, Jr.	UTILITIES COMM. APPOINTMENT.	*SR	Ratified Res.2005-39	05-02-05	05-11-05
S1175	R. C. Soles, Jr.	ROBERT KOGER UTILITIES COMMISSION.	S	Ref To Com On Commerce	05-11-05	

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

Senate Commerce Committee
Tuesday, February 22, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Introduction of Members and Staff

Bills

SB 9	Economic Development Horse Race.	Senator Weinstein

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, February 22, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on February 22, 2005, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles opened the meeting by introducing the pages and the Sergeant-at-Arms staff. Pages included Dillon-Paul Cox of Lenoir, sponsored by Senator Jim Jacumin; Erich Grant of Chapel Hill, sponsored by Senator Ellie Kinnaird; and Nick Wimpey of Elizabeth City, sponsored by Senator Basnight. Sergeant-at-Arms staff included Ms. Mary Perry, Mr. Leslie Wright, and Ms. Ashley Baxter. Senator Soles then introduced each of the staff and had each of them say a few words about their background and expertise. Then each senator introduced himself or herself with their name, district, county or counties represented, and what they did outside of the legislature.

Senator Soles then introduced Senator David Weinstein to speak on Senate Bill 9, Economic Development Horse Race. Senator Julia Boseman sent forth a technical amendment and moved its adoption. The motion carried. Senator Weinstein spoke in favor of the bill. He passed out some information to committee members about the Carolina Horse Park, the Stoneybrook Steeplechase, and how Virginia's horse center has had an impact on their tourism industry. He introduced Mr. Bobby Wright, Chair of the Hoke County Commission, and Mr. Roger Secriest, representing the Carolina Horse Park, who also spoke in favor of the bill. Senator Soles recognized Ms. Barbara Pond, Hoke County resident speaking for herself; Ms. Rebecca O'Berry, Hoke County resident speaking for herself, and next door neighbor of the horse park; and Mr. John Rustin, representing the Family Policy Council, all who spoke against the bill. Mr. Rustin mentioned that Rev. Mark Creech representing the Christian Action League had asked to go on record as opposing the bill. Senator Phil Berger asked about the constitutionality of the bill as it related to emoluments. Senator Doug Berger moved the bill as amended be given a favorable report and the amendment be engrossed into a committee substitute. The motion carried.

The meeting adjourned at 11:45 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, February 22, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. 9 Economic Development Horse Race.

Draft Number:	PCS 15057
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 9

Short Title:	Economic Development Horse Race.	(Public)
Sponsors:	Senators Weinstein; and Horton.	
Referred to:	Commerce.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN BOARDS OF COUNTY COMMISSIONERS TO ISSUE ORDINANCES PERMITTING LIMITED HORSE RACING FOR ECONOMIC DEVELOPMENT PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Limited horse racing for economic development purposes.**

(a) The board of county commissioners may issue ordinances allowing and regulating the running of horse races with pari-mutuel wagering within the county for the purposes of economic development.

(b) The ordinances issued pursuant to subsection (a) of this section shall include the following provisions:

(1) The board of directors of a nonprofit corporation that operates a racetrack shall be responsible for the conduct and operation of the horse races.

(2) The ordinances shall provide for the honesty and integrity of the horse races by providing that the board of directors:

a. Shall issue rules for the operation of any horse races conducted pursuant to this act, including rules governing any pari-mutuel wagering.

b. Shall appoint stewards who shall enforce the racing rules issued by the board of directors.

c. Shall investigate the backgrounds of any persons directly involved with the running of the races, such as owners and jockeys, and any persons involved with the pari-mutuel wagering.

d. Shall provide the necessary equipment for the fair and honest operation of all pari-mutuel wager pools.

e. Shall appoint a veterinarian to ensure that all horses are free from any drugs that might affect the performance of those horses or the outcomes of the races.

f. Shall be personally responsible for the handling and accounting for all funds in the pari-mutuel wager pools.

(3) The number of races that may be run and that all of the races shall be run on one day.

(4) The board of directors shall retain twenty percent (20%) of the amounts wagered in the pari-mutuel wager pools and that these retained funds shall be used by the nonprofit corporation to:

a. First, to pay all expenses for the operation of the races.

b. Second, any balance shall be used to enhance economic development in the county.

(c) This section applies to any county that meets the following requirements:

(1) The county has, for the previous three years been one of the five counties with the lowest wages according to the North Carolina Department of Commerce's list of "County Wage Standards (Private)."

(2) The county has had horse racing for at least three years at the racetrack that will be used for the races run pursuant to this section."

SECTION 2. This act is effective when it becomes law and expires three years from its effective date.

SENATE BILL 9:
Economic Development Horse Race

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Weinstein
Date:	February 21, 2005	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 9 creates a new section of the General Statutes to authorize certain boards of county commissioners to issue ordinances allowing and regulating the running of horse races with pari-mutuel wagering. The board of directors of a nonprofit corporation that operates a racetrack must be responsible for the races and must provide for the honesty and integrity of the races by complying with certain requirements as provided in the ordinance and the bill. The ordinance must also provide for the number of races to be run and require that all races be run on one day. The board is authorized to retain 20% of the amounts wagered to pay expenses for the operation of the races and to enhance economic development in the county.***

Senate Bill 9 applies to any county that (1) has been one of the five counties with the lowest wages for the previous three years and (2) has had horse racing for at least three years at the racetrack to be used for races run pursuant to this section.

The bill is effective when it becomes law and expires three years from its effective date.

CURRENT LAW: While horse racing is allowed under current law, pari-mutuel wagering is prohibited under Article 37 of Chapter 14 of the General Statutes. G.S. 14-292 provides that any person or organization that operates a game of chance or any person who plays at or bets on any game of chance at which money, property or any thing of value is bet is guilty of a Class 2 misdemeanor.

BILL ANALYSIS: Senate Bill 9 authorizes certain boards of county commissioners to issue ordinances allowing and regulating the running of horse races with pari-mutuel wagering. Pari-mutuel wagering is not defined in the bill. The ordinance must provide for a board of directors of a nonprofit corporation that operates a racetrack to be responsible for the conduct and operation of the races. In addition, the ordinance must require the board of directors to do the following:

- Issue rules for the operation of races and rules governing pari-mutuel wagering.
- Appoint stewards to enforce rules issued by the board of directors.
- Investigate the backgrounds of any persons directly involved with the running of the races and any persons involved with pari-mutuel wagering.
- Provide the necessary equipment for the fair and honest operation of all pari-mutuel wagering pools.
- Appoint a veterinarian to ensure that all horses are free from any performance-enhancing drugs.
- Be personally responsible for the handling and accounting for all funds in the pari-mutuel wager pools.

As stated in the bill, the ordinance must provide for the number of races that may be run and "that all races shall be run on one day." This provision is intended to require that all races be run on one day of the year.

The board of directors is authorized to retain twenty percent of the amounts wagered in the pari-mutuel wager pools to (1) pay expenses for the operation of the races and (2) to enhance economic development in the county.

Senate Bill 9 applies only to a county that meets both of the following requirements: (1) has for the previous three years been one of the five counties with the lowest wages according to the Department of Commerce's "County wage Standards (Private)" and (2) has had horse racing for at last three years at the racetrack that will be used for the races to be run pursuant to this section. Currently, only Hoke County meets these requirements.

Section 24 of Article II of the North Carolina Constitution prohibits the General Assembly from enacting local, private, or special acts that regulate labor, trade, mining or manufacturing. In addition, a local act may not be enacted that relates to health, sanitation, and the abatement of nuisances. G.S. 19-1 defines the establishment of a place for the purpose of gambling as a nuisance. Because of the limited applicability of the act to Hoke County only, the bill may be subject to constitutional challenge.

EFFECTIVE DATE: Senate Bill 9 is effective when it becomes law and expires three years from its effective date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 9

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S9-ARG-1 [v.1]

Date Feb. 22 ,2005

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

Senator Boseman

moves to amend the bill on page 1, line 9,
by rewriting the line to read:
"(a) Notwithstanding any other provision of law, the board of county commissioners may issue ordinances allowing and";

and on page 2, line 7,
by rewriting the line to read:
"run on one day of the year."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 9
PROPOSED COMMITTEE SUBSTITUTE S9-PCS15057-RG-1

Short Title: Economic Development Horse Race. (Public)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN BOARDS OF COUNTY COMMISSIONERS TO ISSUE ORDINANCES PERMITTING LIMITED HORSE RACING FOR ECONOMIC DEVELOPMENT PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Limited horse racing for economic development purposes.**

(a) Notwithstanding any other provision of law, the board of county commissioners may issue ordinances allowing and regulating the running of horse races with pari-mutuel wagering within the county for the purposes of economic development.

(b) The ordinances issued pursuant to subsection (a) of this section shall include the following provisions:

(1) The board of directors of a nonprofit corporation that operates a racetrack shall be responsible for the conduct and operation of the horse races.

(2) The ordinances shall provide for the honesty and integrity of the horse races by providing that the board of directors:

a. Shall issue rules for the operation of any horse races conducted pursuant to this act, including rules governing any pari-mutuel wagering.

b. Shall appoint stewards who shall enforce the racing rules issued by the board of directors.

c. Shall investigate the backgrounds of any persons directly involved with the running of the races, such as owners and jockeys, and any persons involved with the pari-mutuel wagering.

d. Shall provide the necessary equipment for the fair and honest operation of all pari-mutuel wager pools.

e. Shall appoint a veterinarian to ensure that all horses are free from any drugs that might affect the performance of those horses or the outcomes of the races.

f. Shall be personally responsible for the handling and accounting for all funds in the pari-mutuel wager pools.

(3) The number of races that may be run and that all of the races shall be run on one day of the year.

(4) The board of directors shall retain twenty percent (20%) of the amounts wagered in the pari-mutuel wager pools and that these retained funds shall be used by the nonprofit corporation to:

a. First, to pay all expenses for the operation of the races.

b. Second, any balance shall be used to enhance economic development in the county.

(c) This section applies to any county that meets the following requirements:

(1) The county has for the previous three years been one of the five counties with the lowest wages according to the North Carolina Department of Commerce's list of "County Wage Standards (Private)."

(2) The county has had horse racing for at least three years at the racetrack that will be used for the races run pursuant to this section."

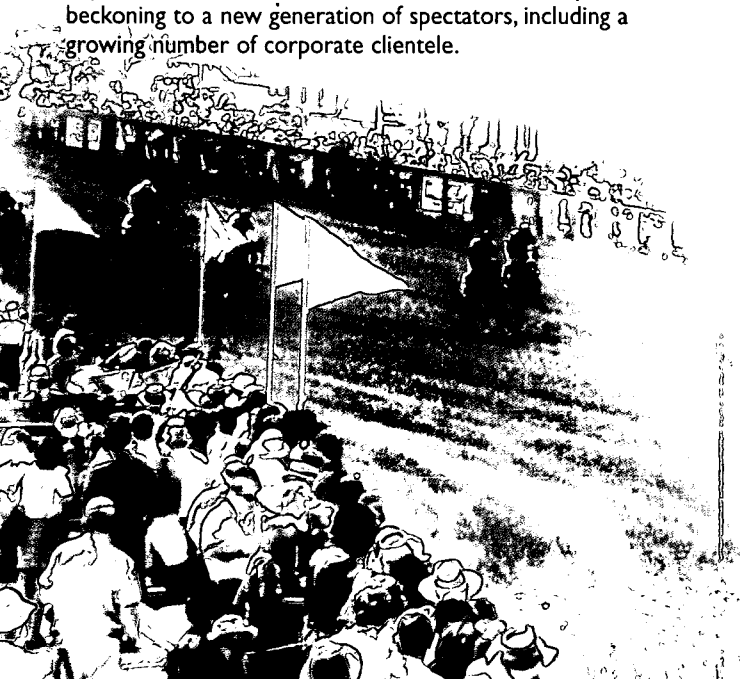
SECTION 2. This act is effective when it becomes law and expires three years from its effective date.

WHAT IS THE CAROLINA HORSE PARK?

The Carolina Horse Park at Five Points (CHP) consists of hundreds of acres of protected land dedicated to world-class equestrian competition and the promotion of economic growth to its immediate and surrounding areas. Located in the Sandhills of North Carolina in Hoke County, the CHP is twelve miles or just ten minutes from Southern Pines/Pinehurst, twenty minutes from Fayetteville and about one hour from Raleigh/Durham. The Park's vast open spaces, wooded areas, rolling hills and shady ponds make it an ideal site for multi-disciplinary equestrian pursuits and as a tourist destination.

CHP, as it is commonly called, was founded in 1998 by a group of equestrian enthusiasts who are devoted to preserving open space and promoting equestrian competition. The CHP encourages responsible land use in open-space and low-density development. The Carolina Horse Park Foundation is the non-profit 501(c)3 organization which runs the park's activities. Donations are tax deductible, and to date, the CHP Board of Directors has helped raise nearly two million dollars to build and maintain the Park.

As the Carolina Horse Park continues to grow and add events, its main attraction remains the Stoneybrook Steeplechase. Founded more than a half century ago in Southern Pines, NC, Stoneybrook moved to the CHP in 2001. Each year, the venerable steeplechase proves to be a showcase for superior horse racing talent and a springtime social gathering for "people watching" at its best. Now expanded to include a weekend of festivities, Stoneybrook is beckoning to a new generation of spectators, including a growing number of corporate clientele.



CALENDAR OF EVENTS

Southern Pines Horse Trials

Middle of March

Olympic and other International-caliber Eventing competitors add luster to an impressive roster each year for the Southern Pines Horse Trials held at the Carolina Horse Park (CHP). Eventing might best be described as a triathlon for horses, spanning three days of competition that includes dressage, cross-country and stadium jumping. Hundreds of horse and rider combinations test their skill and courage at the Advanced, Intermediate and Preliminary levels. Captain Mark Phillips, coach of the U.S. Equestrian 3-Day Event Team, designed the cross-country courses. The spectator-friendly course design allows for impressive vistas, fairway-like galloping lanes, and the chance to see horses challenging water hazards and ditches, jumping through trees and even through a tobacco barn!

Southern Pines Hunter Jumper Classic

Third week of March
and Second week of September

Hundreds of competitors gather for five days to showcase some of the Southeast's most talented show jumpers and hunters. From pony club riders to top professionals, this show has something for everyone. The conditions for stadium-style jumping are ideal at the CHP.

Stoneybrook Steeplechase Festival

First weekend in April

A Sandhills springtime tradition. Each year this steeple-chase gets bigger and better than ever! An annual event for more than a half-century, the Stoneybrook Steeplechase moved from its original home in Southern Pines to the CHP in 2001 for its fiftieth running. That inaugural event drew tens of thousands of spectators, and with each year, the event builds. There are sentimental elements like the hat and tailgate contest, and now there is corporate and business entertaining like never before. There's also a Bar-be-Que on Thursday evening to kick off the weekend. The Pegasus Tent is the site of a catered dinner and dancing Gala Friday night and it becomes an exclusive Club on Saturday, Race Day. Call the Park office to purchase tickets, tailgating spots, corporate tents and the like.

Longleaf Pine Horse Trials

Late April

The month of April winds up on a high note with the Longleaf Pine Horse Trials. For nearly three decades this event was a staple in Southern Pines. At its new home at the Carolina Horse Park, Novice, Training and Preliminary cross-country courses designed by certified designer, John Williams, will accommodate hundreds of horses and riders. Williams, an International Event competitor himself, designed the courses to ensure that they provide a challenge for horse as well as rider.

Five Points Horse Trials

Late September

Fall at the Carolina Horse Park is filled with colorful leaves and riders galloping over the countryside. The Five Points Horse Trials will host riders from novice through intermediate level. Include this exciting weekend in your travel plans this fall. For more information on any of these events, please contact the Carolina Horse Park office at: 910 246-9808 or visit our website: www.carolinahorsepark.com

THE FUTURE

The future of the CHP is strong. With six events planned after only one year in operation, the Park has earned the reputation of a first rate facility. Talented individuals with international credentials designed the steeplechase track and the multiple event courses. Each venue continues to win praise for its quality layout, footing and spectator-friendly design. In addition to operating top-notch events, the activity at the CHP is proving to be a tourist attraction. With the success of the inaugural events CHP's influence on the local economy and tourism are already being felt. We at the CHP look forward to hosting tens of thousands of visitors who will visit the Park each year.

What's next for the CHP? In addition to growing the equestrian calendar, the Park is positioned to host a variety of non-equestrian activities. CHP provides a colorful, natural backdrop for concerts, corporate outings, dog shows, antique and classic car shows, as well as other local activities.

One thing is for sure, CHP has plans to further its goal: to host world-class, multi-disciplinary equestrian competition while safeguarding the environment and contributing to the economic growth of the surrounding area. To that end, the Carolina Horse Park is off to a very good start.

HOW CAN YOU GET INVOLVED?

BECOME A "FRIEND OF THE PARK"

Contact the office for information on how to join this membership program and to find out about the **exciting benefits for members.**

VOLUNTEER

Get involved in one or more of the many exciting events or programs going on at the Carolina Horse Park each year. You will have a chance to get an up close and behind the scenes look at what it actually takes to put on a world class event, steeplechase race or horse show. Meet new friends, learn about the Park and enjoy a wonderful day in the beautiful outdoors.

ATTEND AN EVENT

The next best thing to being involved in an event is actually **attending one!** Bring your family and friends and spend some time in a beautiful park watching some of the most thrilling action you'll ever see. Start a family tradition, entertain your clients, or have your annual corporate outing at one of the events held at he CHP.

MAKE A DONATION

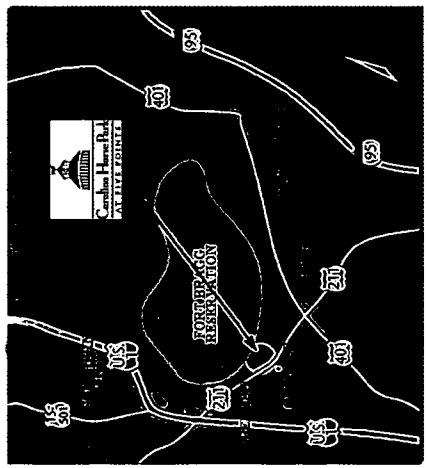
The Carolina Horse Park Foundation is a 501(c)3 non-profit organization, all donations are tax deductible. Through donations, fundraising and grants, we are able to keep CHP growing. Log on to **www.carolinahorsepark.com** to find out about some of the exciting projects planned to support the growth at the park.

Carolina Horse Park
PO Box 2468 • Southern Pines, NC 28388
(910) 246-9808 • Fax: (910) 246-9807
www.carolinahorsepark.com
email: carolinahorsepark@earthlink.net



Carolina Horse Park AT FIVE POINTS

PO Box 2468
Southern Pines, NC 28388





Carolina Horse Park

AT FIVE POINTS

North Carolina's Premier Equestrian Center for National and International Competitions

Steeplechase, Eventing, Dressage, Hunter Jumpers Combined Driving



NORTH CAROLINA
A better place to be®

NORTH CAROLINA DEPARTMENT OF COMMERCE
TOURISM, FILM, AND SPORTS DEVELOPMENT

Dee Bagley (Sen. Weinstein)

From: Roger Secrist [rogers@pinehurst.net]
Sent: Thursday, October 28, 2004 9:00 PM
To: Sorrells, Mark; Sen. Tony Rand; Sen. David Weinstein
Cc: Parkins, G; Peterson, Wayne; Porter, Don; Stuart, Kyra King; Whitehouse,Jo; Akers, Jennifer; Andrew Temkin; denny emerson; 'John Sheets'; King Penniman; 'Megan McGee'; Phillip Vedder; Stegman Gary
Subject: Virginia Horse Center Attachment - Economic Impact potentials for Carolina Horse Park

Mark..... Wanted to update GoldenLeaf's data re the potential for the Carolina Horse Park..... The Virginia Horse Center started in 1985 and CHP is further along in its development than Virginia was after three years.... Thanks for your assistance... Roger Secrist

From: "Lethia Hammond" <lhammond@horsecenter.org>
To: <friends@horsecenter.org>
Subject: Virginia Horse Center Attachment - Talking
Date: Wed, 27 Oct 2004 16:49:47 -0400

Virginia Horse Center's Impact on the Tourism Industry

The Virginia Horse Center attracts over 400,000 visitors each year.

60% of Horse Center visitors come from out-of-state

Each show exhibitor brings an average of 3 people with them who combined generate over $3,000 in direct, taxable spending during their stay.

According to a 2001 study conducted by the Weldon Cooper Center for Public Policy at the University of Virginia, (the 2001 study), lodging sales generated by the Virginia Horse Center generated nearly 30 % (506 rooms) of all lodging sales in the Rockbridge County area. Since the study was conducted, three new hotels have been built within a mile radius of the Horse Center. Reliable Reservations, a private reservation company, estimates that over 40% of all lodging sales are now generated by Horse Center visitors.

Since Virginia Horse Center operations began, six new hotels have been built within a five radius of the facility and a seventh is under construction.

The Virginia Horse Center captures a significant amount of in-state tourism dollars that would otherwise be spent at out-of-state equine facilities.

The Virginia Horse Center hosts over 90 events each year over 285 show days.

Following the 2001 attacks on the World Trade Center and the Pentagon travel
decreased significantly throughout the Shenandoah Valley. However, visitors
to the Virginia Horse Center increased significantly providing a stabilizing force in Virginia's tourism industry.

According to Reliable Reservations Service, during the Lexington Spring Premiere and Encore shows in 2003, a million dollars in hotel sales were generated in the Rockbridge area alone during the two-week period. The event drew 700 horses from twenty states.

Virginia Horse Center Contributions to the Commonwealth's Equine Industry

The Virginia Horse Center was created to revive and enhance the state's declining equine industry and the results have been phenomenal.

Virginia now ranks as the 5th largest equine state in the U.S. surpassed only by Texas, California, Missouri, and Tennessee.

The total value of all equine in Virginia is $1.46 billion dollars.

Equine sales in Virginia are approximately $100 million annually making equine the 7th largest agricultural commodity in Virginia.

Each year $500 million is spent in Virginia caring for equine.

In 2001, the equine industry generated over $800 million in business sales and created 22,000 jobs in Virginia with a payroll of over $352 million.

Numerous small businesses have been created to service the state's equine industry and Virginia Horse Center exhibitors.

A number of declining agricultural properties have been purchased and preserved by Virginia Horse Center enthusiasts, breeders, and trainers relocating to Virginia from out-of-state.

The Virginia Horse Center regularly attracts top competitors from throughout the country and around the world.

Private Investment in the Virginia Horse Center
Private donations to the Virginia Horse Center have totaled nearly $10 million dollars. Over 95 % of these donations have come from private individuals.

The Horse Center and the Commonwealth have been able to leverage private donations making the Virginia Horse Center one of the finest equine facilities in the country and enabling it to compete with facilities in neighboring states that are fully state funded.

The property and improvements purchased with private donations will ultimately become the property of the Commonwealth of Virginia when the capital construction debt is paid.

Increasingly public-private partnerships are encouraged as a means of financing state and local government projects. Private investors noting the potential loss of private donations, should the Virginia Horse Center default on its debt service payment and be forced to close, will be less likely to support public-private partnerships in the future.

Average Exhibitors at the Virginia Horse Center
64% of all horse owners throughout the United States have a total household income of less than $75,000 annually. Only 21% have incomes in excess of $100,000.

Each year over 300 youth from across the United States attend the United States Pony Club show held at the Virginia Horse Center.

4-H events are held annually at the Virginia Horse Center, attracting thousands of youth and their parents from throughout the Commonwealth.

Annual therapeutic riding shows have been held at the Virginia Horse Center for the past 11 years.

Hoofbeats Inc., a local, nationally accredited therapeutic riding facility, has submitted a letter of intent to build a regional Special Olympics and Make-A-Wish Foundation facility at the Virginia Horse Center, paid entirely with private donations.

Virginia Horse Center's Impact on the State Economy
According to the 2001 Weldon Cooper study, for every dollar the state has invested in the Virginia Horse Center, nearly three dollars in sales taxes are returned to state and local governments. These numbers were

conservative at the time the study was conducted, and are low now. Since 2001, Horse Center operations have grown 20%. It is now estimated that nearly $4.00 in tax revenues are returned for every dollar the state has invested.

According to the 2001 study, direct expenditures in Virginia by visitors to the Virginia Horse Center and the Horse Center itself total over $30 million annually.

These expenditures have a total impact of at least $41 million of the state's economic output.

In 2001, Horse Center activities accounted for over $3.4 million in state and local tax revenues, of which $1.9 million went to the state and $1.5 million to local governments. Because Horse Center operations have grown significantly since 2001, tax revenues generated have also increased tremendously.

In 2001, the Virginia Horse Center added a second covered arena and two additional barns. The expansion has allowed the Horse Center to host multiple, large events simultaneously, drawing more profitable events and attracting greater numbers of top competitors from throughout the country and around the world.

According to the 2001 study, over 700 jobs have been created throughout the state as a result of spending at the Virginia Horse Center.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — February 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Mike Wood	County of Hoke
Robert A Wright	County of Hoke
Charles V Daniel	County of Hoke
Jessica Sage	NCFPC
[signature]	NCFPC
Alice G. Underhill	NC House - Dist. 3
John Long	Martin Marietta Materials
[signature]	Intern - Senator Purcell
[signature]	Intern - Senator Berger
Kelly Shavelin	UNC School of Law
Shilpa Sejpal	UNC school of law

VISITOR REGISTRATION SHEET

Senate Commerce Committee — February 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Roger Secrist	Carolina Horse Park Chairman of Bd.
Gwen Parkerson	Carolina Horse Park-Exec Dir
Lefreda Williams	Carolina Horse Park, President
Shirley Thomas	Hoke Co.
Roberta O Berry	Hoke Co
Barbara Todd	Hoke Co resident
John McMillan	MF&S
Willie Scloughter	
Jon Treadway	visita
Will Cannon	visitor
Shawn Traxler	Visitor

VISITOR REGISTRATION SHEET

Senate Commerce Committee — February 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pulley	NCATL
Kevin Leonard	DCSR
John Mabry	Governor
Doug Hebron	NC Bar Assoc
Michelle Frazier	NC Bar Assoc.
Connie Wilson	SBJ
Susan Valaam	Nationwide
[illegible]	IFNC
Brent Pasichal	Young, Moore
Betty Turner	Bank of America
Ken Wright	BCBSNC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — February 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
DON HIBBERT	NC DOC
Kay Gattis	NC State Ports Authority
ANDREW HOLTON	Sen. Garrou's office
Sandy Sands	WCSR
Steve Metcalf	The Policy Group
Laura Clowers	WRAL
Jon Carr	Jordan Price
Paul Stock	NC Farmers
Dick Collins	attorney
Andy Ellen	NCRMA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — February 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NMLS
PG [illegible]	NCFS
Bill Scoggin	KCCI

Senate Commerce Committee
Tuesday, March 1, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

- Chair JoAnne Sanford, Utilities Commission
- Commissioner Joseph Smith, Banking Commission

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, March 1, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 1, 2005, in Room 1027 of the Legislative Building. Eighteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles opened the meeting by asking Mr. Steve Rose, Counsel to the Committee to introduce the Utilities Commission to the Committee (see Attachment 1). He then asked the Chair of the Commission, Ms. JoAnne Sanford, to introduce herself, and then the other five current members of the Commission introduced themselves. There is one vacancy. Ms. Sanford gave an overview of the work of the Utilities Commission using a PowerPoint presentation (see Attachment 2). Senator Soles introduced Mr. Robert Gruber, Director of the Public Staff. The Public Staff was created in 1977 to represent consumers before the Commission.

Senator Soles introduced the pages: Anna Lee Pascal of Raleigh, sponsored by Senator Neal Hunt; and Amanda Eubanks of Beaufort, sponsored by Senator Scott Thomas.

Senator Soles then asked Mr. Walker Reagan, Counsel to the Committee to introduce the Banking Commission to the Committee (see Attachment 3). Senator Soles then introduced Mr. Joseph A. Smith, Jr., Banking Commissioner, to present an overview of the Commission. There are 23 members of the Banking Commission (see Attachment 4). After Mr. Smith's presentation, Committee members expressed interest in reverse mortgages and high interest rates on credit cards. Senator Nesbitt asked staff to look into possible remedies to interest rates that are not subject to North Carolina law.

The meeting adjourned at 12:10 p.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

ATTACHMENT 1

Memorandum

February 28, 2005

To: Senator R.C. Soles, Jr., Chairman,
Senate Committee on Commerce

From: Steven Rose, Committee Co-Counsel

Re: North Carolina Utilities Commission

This is a very brief overview of the North Carolina Utilities Commission for introductory purposes. Chair Jo Anne Sanford will cover the make-up and function of the Commission in detail.

The Utilities Commission consists of seven members appointed for eight year staggered terms by the Governor, subject to confirmation by the General Assembly by joint resolution. The Chair is appointed by the Governor for a four year term. The current members are:

Jo Anne Sanford, Chair
J. Richard Conder
Sam J. Ervin, IV
Lorinzo L. Joyner
James Y. Kerr, III
Robert V. Owens, Jr. and,
Howard N. Lee, appointed to fill the vacancy created by the resignation of Michael S. Wilkins. Commissioner Lee's appointment is subject to confirmation by the General Assembly.

The Commission has regulatory and quasi-judicial oversight of the public utilities operating in the State. It is a direct administrative arm of the General Assembly, and its decisions are appealed directly to the appellate courts. It has extensive oversight of services and rates of traditional monopoly services such as electricity, natural gas, water and wastewater. It has more limited oversight over competitive services such as telephone service. Chair Sanford will get into this in more detail in her presentation.

In the Senate, bills dealing with utility services or the Commission are traditionally referred to the Commerce Committee. (Prior to 1995, the Senate had a separate Committee on Public Utilities. This was not continued after the death of the Chair of that committee, Senator Mary Seymour, in 1994.)

North Carolina's Public Utility Infrastructure & Regulatory Climate

Presented by

NORTH CAROLINA UTILITIES COMMISSION

March 2005

ATTACHMENT 2

Who We Are

NORTH CAROLINA UTILITIES COMMISSION

Dobbs Building, 430 North Salisbury Street 27603-5918
4325 Mail Service Center 27699-4325
Phone: 919/733-4249 Fax 919/733-7300
www.ncuc.net

Commissioners

J. Richard Conder
Robert V. Owens, Jr.
Sam J. Ervin, IV
Lorinzo L. Joyner
James Y. Kerr, II
Vacancy

Jo Anne Sanford, Chair

PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION

Representing the Using and Consuming Public

Robert P. Gruber, Executive Director

Dobbs Building, 430 North Salisbury Street 27603-5918
4326 Mail Service Center 27699-4326

■

Consumer Services Division (Complaints)
(919) 733-9277

Regulation of Public Utilities

- Purpose: protect the public's interest in receiving adequate service at reasonable rates.
- Traditional regulatory bargain: utilities exchange benefit of monopoly franchised service territory for obligation to provide adequate service at reasonable rates.
- Commission's regulatory obligation: to be fair and reasonable to public utilities and their customers.
- Commission's regulatory tools:
  - certification of new facilities
  - rate establishment or review
  - service quality oversight
- Recent trends: Regulation of certain utility industries and services by the Commission has become more complex due to changes in State and Federal law and rules and industry trends. Certain utility services have been fully or partially deregulated.

History of NC Utilities Commission

- Oldest regulatory body in state government: evolved from Railroad Commission (1891) to Corporation Commission (1899) to Utilities Commission (1933)

- History of significant legislative grants of, or limitation on, regulatory authority:
  - Railroad – 1891
  - Telephone – 1893
  - Electric, Gas & Water – 1913
  - Wastewater – 1917
  - Housing – 1935
  - Hospitals – 1943
  - Buses/Brokers – 1949
  - Motor Carriers & Ferries – 1963
  - Electric Generation – 1965
  - Electric Membership Cooperatives – 1965
  - Payphone Service Providers – 1985
  - Long Distance Telephone Competition – 1985
  - Shared Tenant Service – 1987
  - Local Telephone Competition – 1995
  - Water Resale – 1996
  - Long Distance Rate Deregulation - 2003

NCUC Organization

- Administrative agency of General Assembly; legislative oversight by House Public Utilities Committee, Senate Commerce Committee, and Joint Legislative Utility Review Committee

- Seven members: appointed by Governor, subject to confirmation by General Assembly, serving staggered, eight-year terms *(G.S. 62-10)*

- Chair: appointed by Governor, 4-year term, organizes Commission's work. *Ex officio* member of Tax Review Board, Energy Policy Council, Agency for Public Telecommunications Board and Geographic Information Services Board. Membership responsibilities currently shared among Commissioners. *(G.S. 62-12,13)*

NCUC Organization *cont.*

- Commissioners subject to standards of judicial conduct and prohibited by law from engaging in any other employment, business or profession while in office *(G.S. 62-10(i))*

- NCUC employs 63 people, organized among 3 divisions:
  - Administrative, Operations and Fiscal Management

- Annual budget: $6,061,334 (certified FY 2005)
  - NCUC budget: $ 5,642,770
  - Gas Pipeline Safety budget: $ 418,564

  - Gas Pipeline Safety is housed in Commission, partial federal reimbursement
  - NCUC is fee-funded agency, supported by regulatory fee percentage established by General Assembly annually and applied to utility jurisdictional revenues *(G.S. 62-302)*

NCUC's Responsibilities & Procedures

- Calendar year 2004:
  - 1,423 formal proceedings instituted before NCUC
  - 76 hearings in contested cases
  - 10,714 filings in Chief Clerk's office
  - 2,556 orders issued
  - 516 open dockets as of 12/31/04

- Appeals from general rate case decisions to NC Supreme Court; all others to NC Court of Appeals (absent federal jurisdiction)
- NCUC conducts proceedings pursuant to federal law and participates in proceedings before federal courts and regulatory agencies *(G.S. 62-48)*

NCUC's Responsibilities & Procedures *cont.*

- Publication requirements (G.S. 62-17):
  - Annual reports to Governor include copies of general orders, regulations, comparative statistical data, rate comparisons, report of pending matters & digest of principal decisions
  - Final decisions on merits in formal proceedings
- Limited jurisdiction over municipalities and cooperatives

Jurisdictional Utilities

(AS OF 12/31/04)

UTILITY	QTY
BUS / BROKER	31
ELECTRIC	5
ELECTRIC COOPERATIVES	32
ELECTRIC MERCHANT PLANTS	4
FERRIES	17
NATURAL GAS:	
▪ LOCAL DISTRIBUTION COMPANIES	5
▪ INTRASTATE PIPELINE	1
MOTOR CARRIERS OF HOUSEHOLD GOODS	254
SMALL POWER PRODUCERS	75
TELEPHONE:	
▪ COMPETITIVE LOCAL PROVIDERS	204
▪ INCUMBENT LOCAL PROVIDERS	16
▪ LONG DISTANCE CARRIERS	437
▪ PAYPHONE SERVICE PROVIDERS	283
▪ SHARED TENANT SERVICES	22
WATER RESALE COMPANIES	264
WATER / WASTEWATER	208
TOTAL	**1,858**

Industry Revenue Profile

- FY2004 Jurisdictional Revenues: $10,385,873,548
  - Electric $6,225,768,406
  - Telecommunications $2,623,121,931
    - Includes Telephone, Payphone Service Providers, and Shared Tenant Service Providers
  - Natural Gas $1,412,549,295
  - Water and Wastewater $67,803,616
    - Includes Water Resale Companies
  - Transportation $56,630,299
    - Includes Motor Carriers, Bus/Brokers, and Ferries

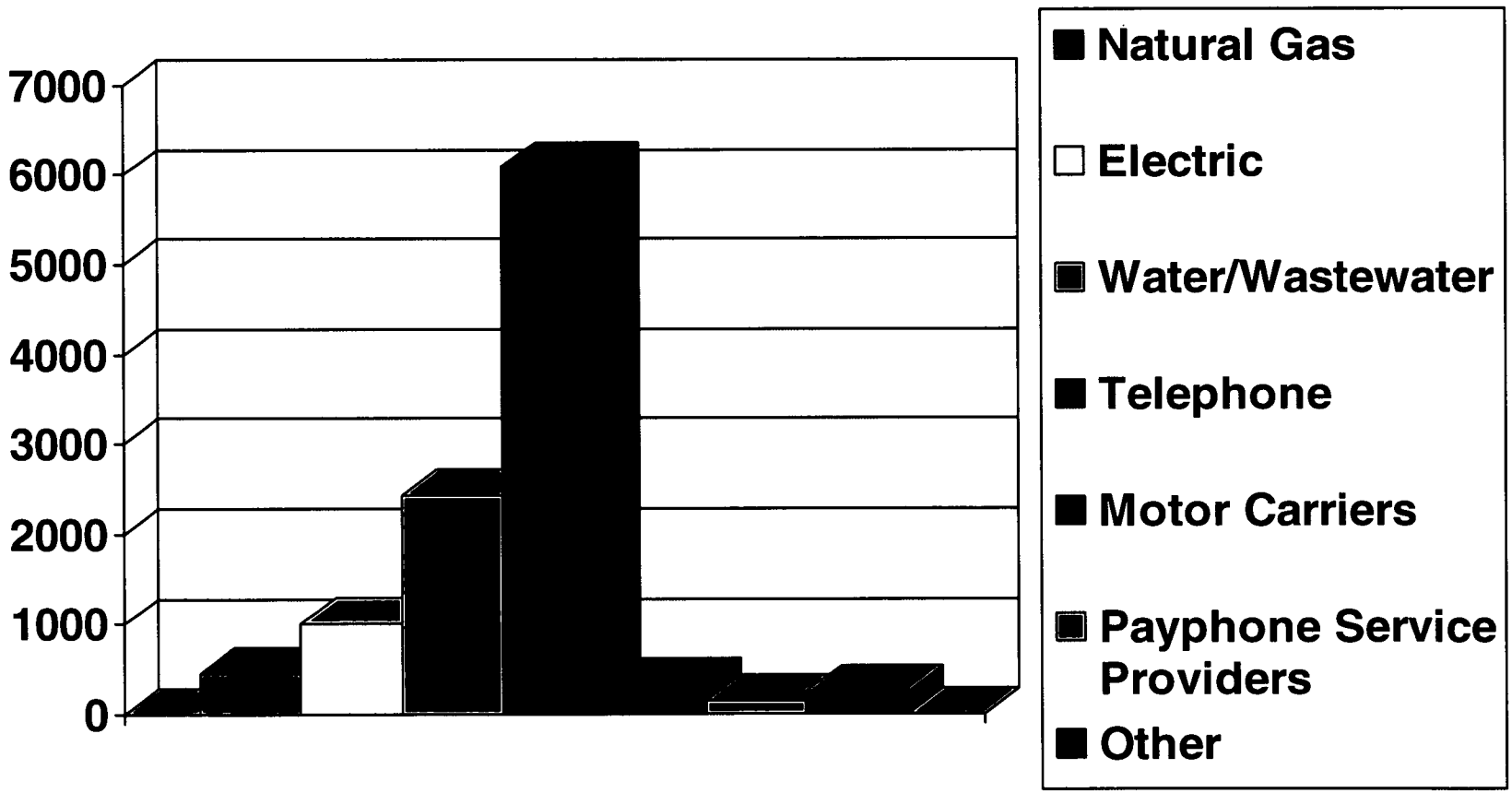
Filings & Orders by Industry Group

(Calendar Year 2004)

	Filings	Orders
■ Electric	1,010	257
■ Telephone	6,080	984
■ Natural Gas	456	72
■ Water/Wastewater	2,432	821
■ Motor Carriers	343	245
■ Payphone Service Providers	145	122
■ Other (Bus/Broker, Electric Merchant Plant, EMC, Ferry, Small Power Producer, & Misc.)	248	55
■ Total	10,714	2,556

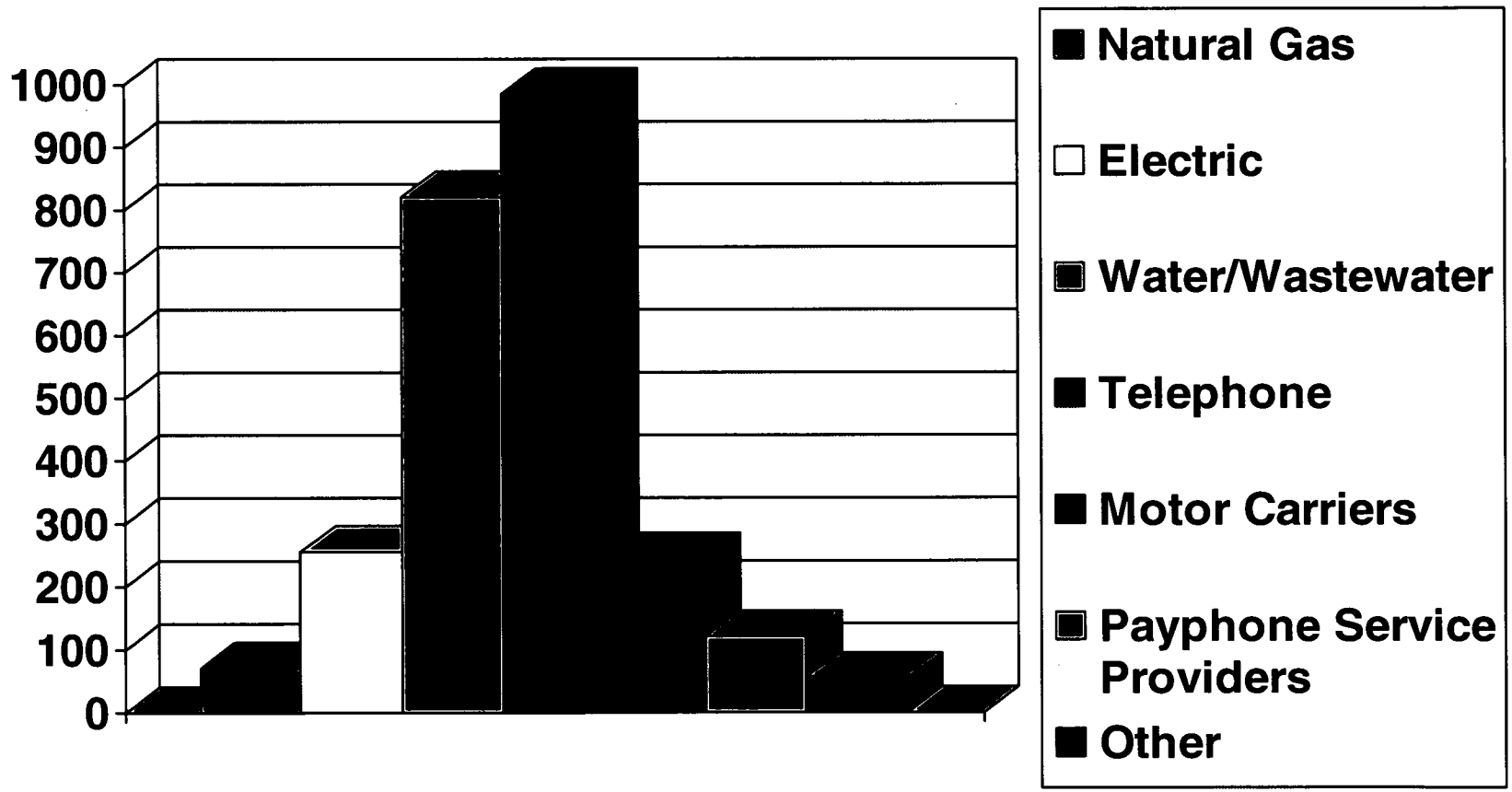
Filings by Industry Group

(Calendar Year 2004)



Orders by Industry Group

(Calendar Year 2004)



Industry Specific Overview

- I. Electric Industry
- II. Natural Gas Industry
- III. Telecommunications Industry
- IV. Transportation Industry
- V. Water and Wastewater Industry
- VI. Selected Financial and Operational Data

I Electric

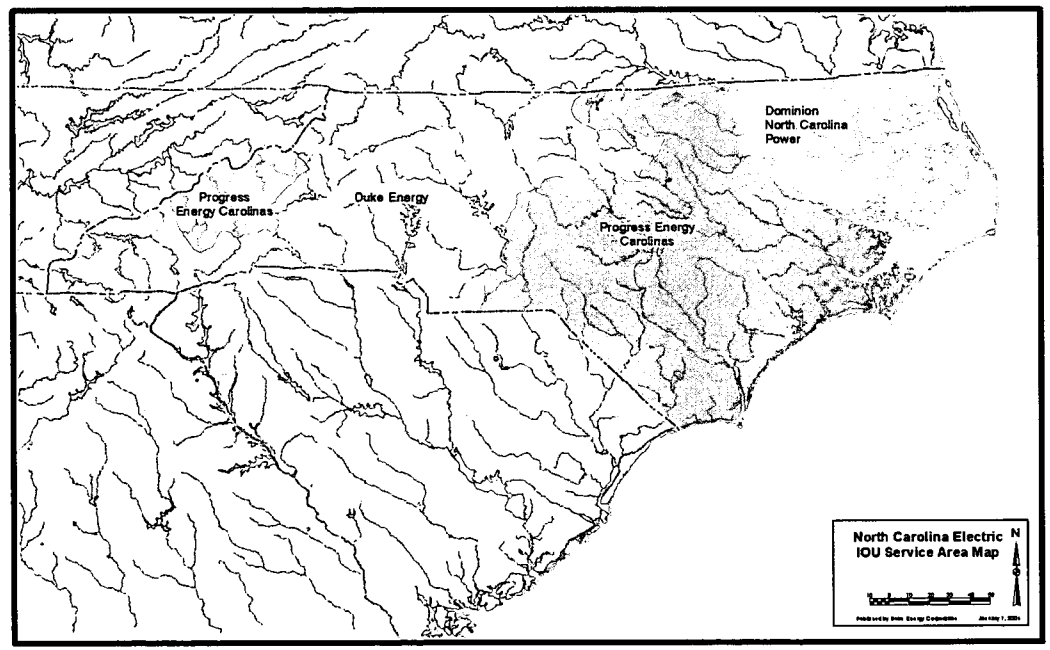
Basic Facts: Regulated Electric Utilities

- 3 Investor-Owned Utilities (IOUs)
  - Duke Energy, through Duke Power and Nantahala Power & Light - 1,695,000 customers in Piedmont and Western North Carolina
  - Progress Energy Carolinas - 1,145,000 customers in Eastern and Western North Carolina
  - North Carolina Power - 115,000 customers in Northeastern North Carolina
- 2 University-Owned Utilities
  - New River Light and Power, Boone
  - Western Carolina University, Cullowhee

Basic Facts:
EMC and Municipal-Owned

- 32 Electric Membership Corporations (EMCs) - 899,000 customers
- 72 Municipal-owned electric distribution systems - 533,000 customers
- Limited NCUC jurisdiction over EMCs and Munis:
  - Service complaint jurisdiction over EMCs *(G.S. 62-42)*
  - Monitor subsidiary business activities of EMCs to prevent subsidization by electric customers *(G.S. 117-18.1)*
  - EMC territorial assignment issues *(G.S. 62-110.2)*
  - Certification authority for construction of electric generating facilities *(G.S. 62-110.1)*
  - Certification authority for construction of electric transmission lines of 161+ KV *(G.S. 62-101)*
  - Safety jurisdiction over gas pipeline facilities operated by municipalities and similar entities *(G.S. 62-50)*

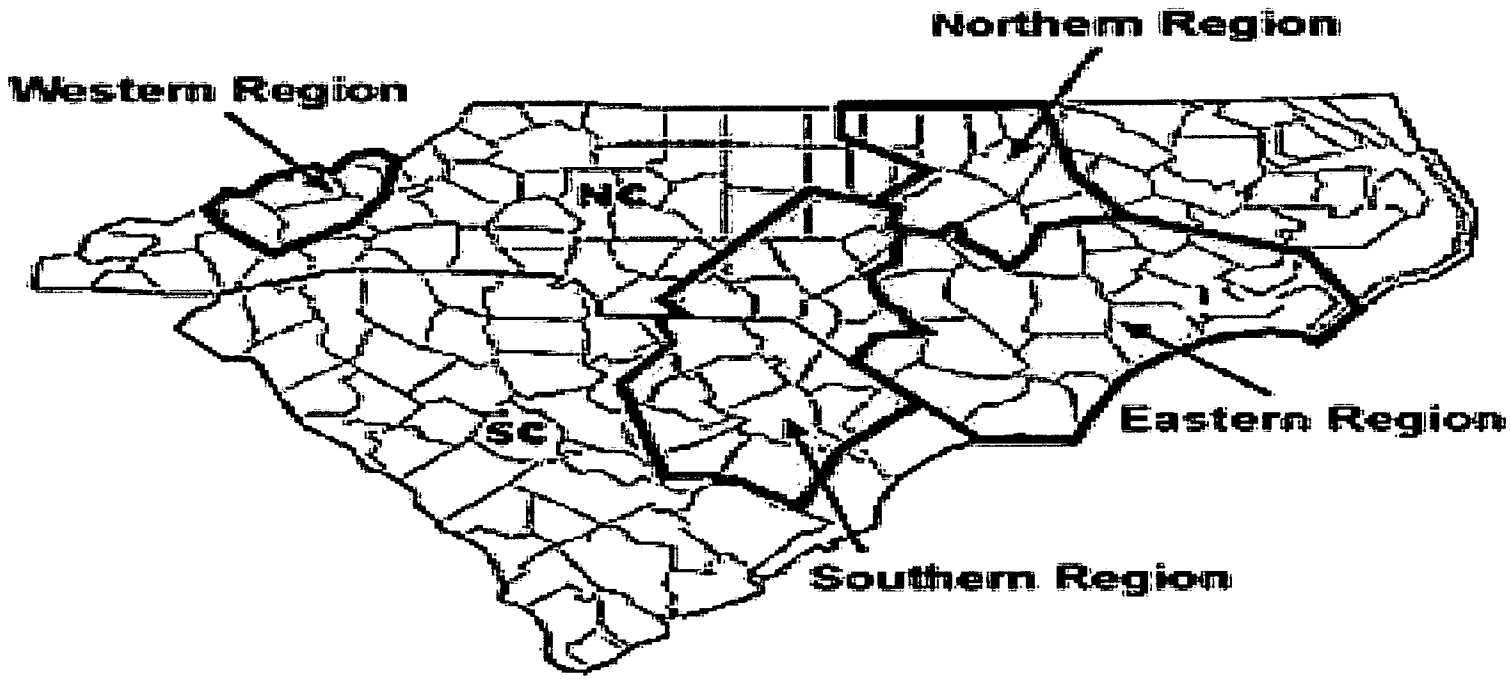
North Carolina Electric IOU Service Area Map



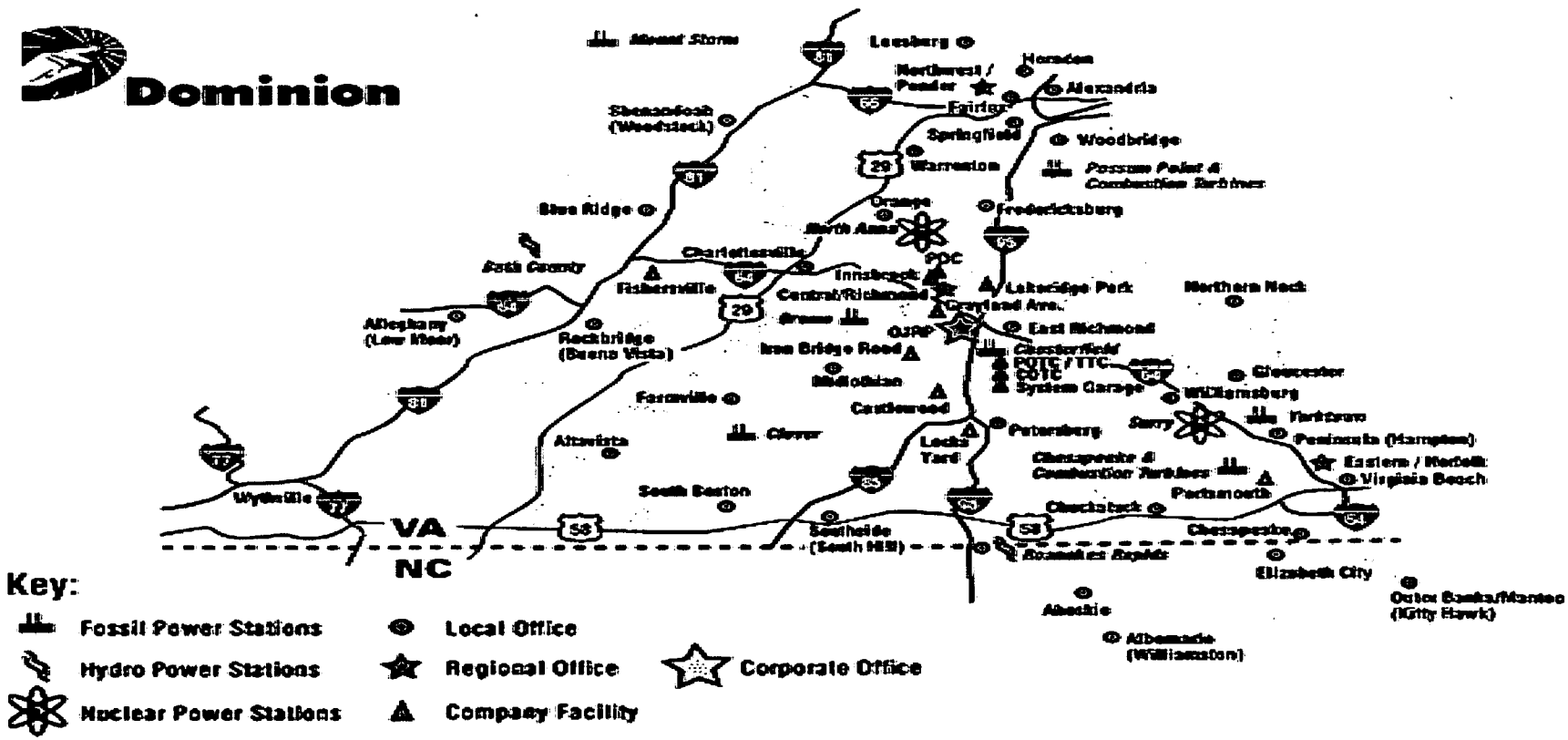
Duke Power NC & SC Service Area



Progress Energy NC & SC Service Area



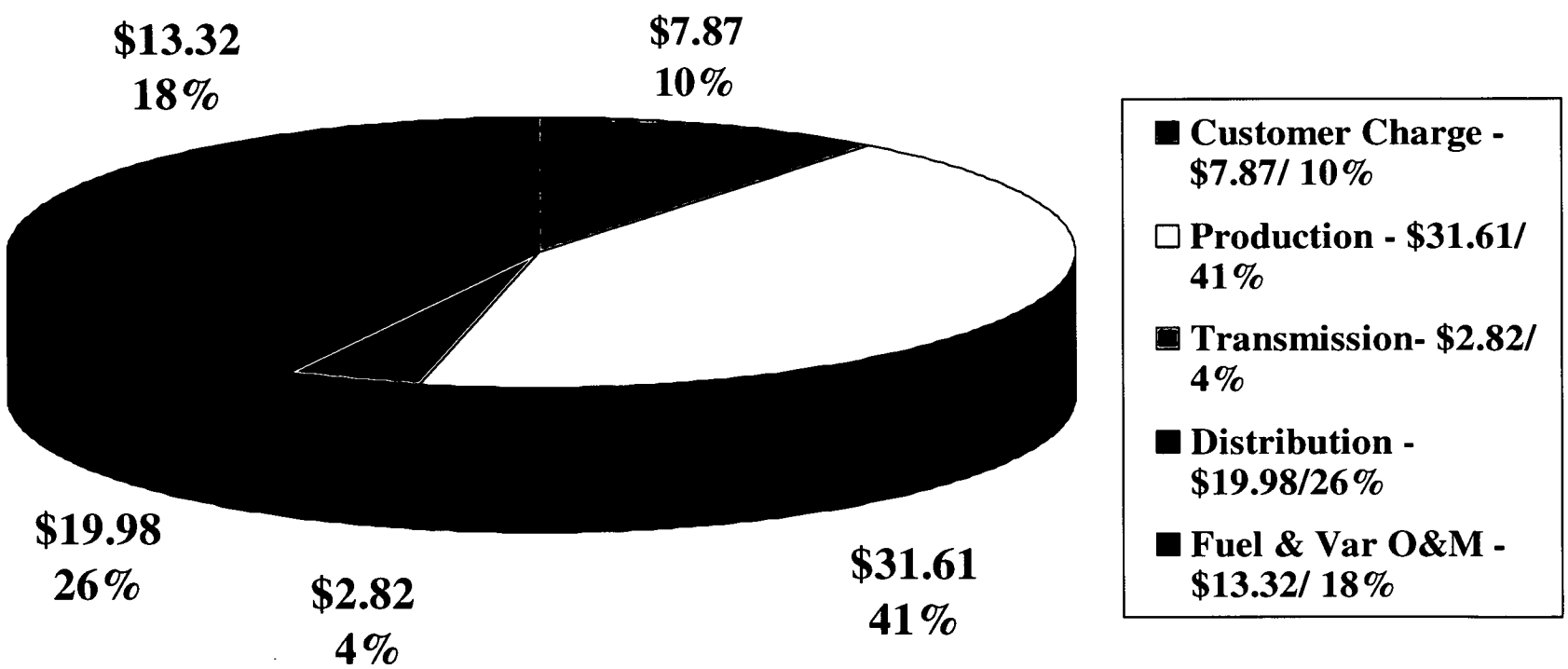
NC Power NC & VA Service Area



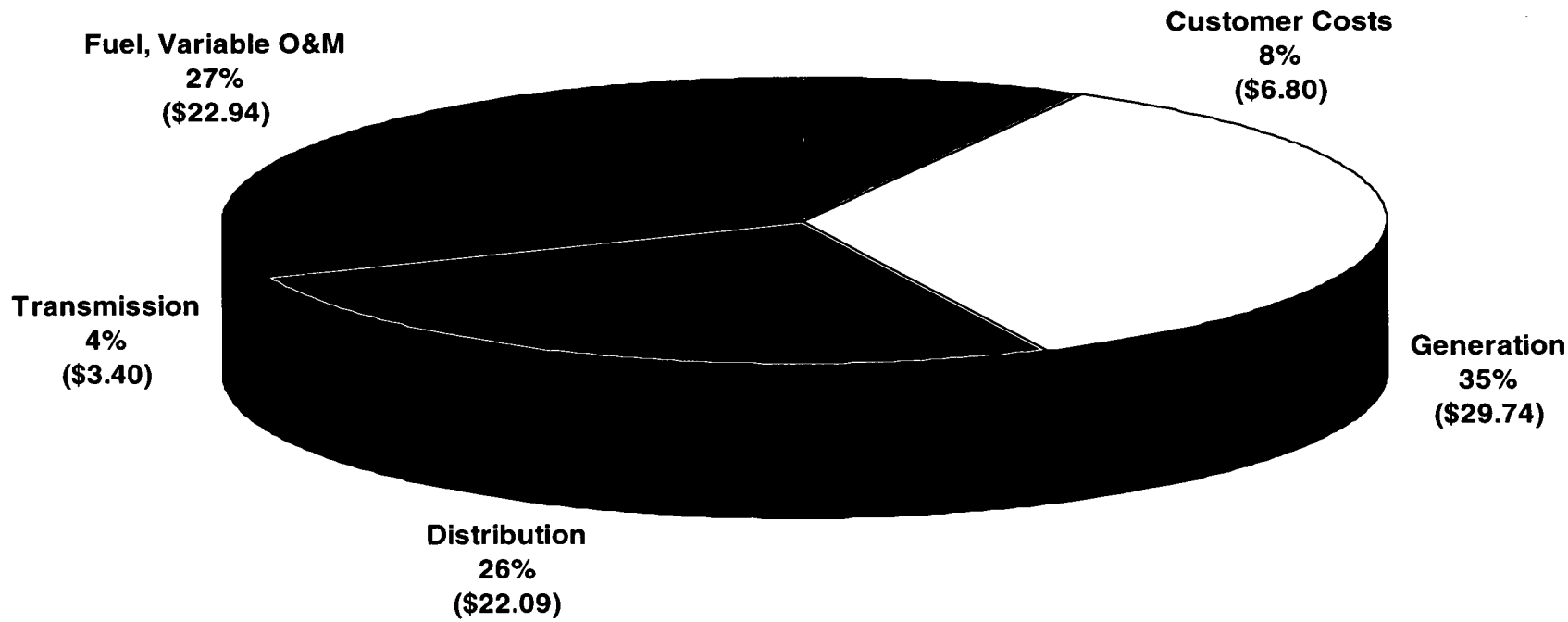
Duke Power

Typical Residential 1,000 kWh Monthly Bill

Total: $75.59



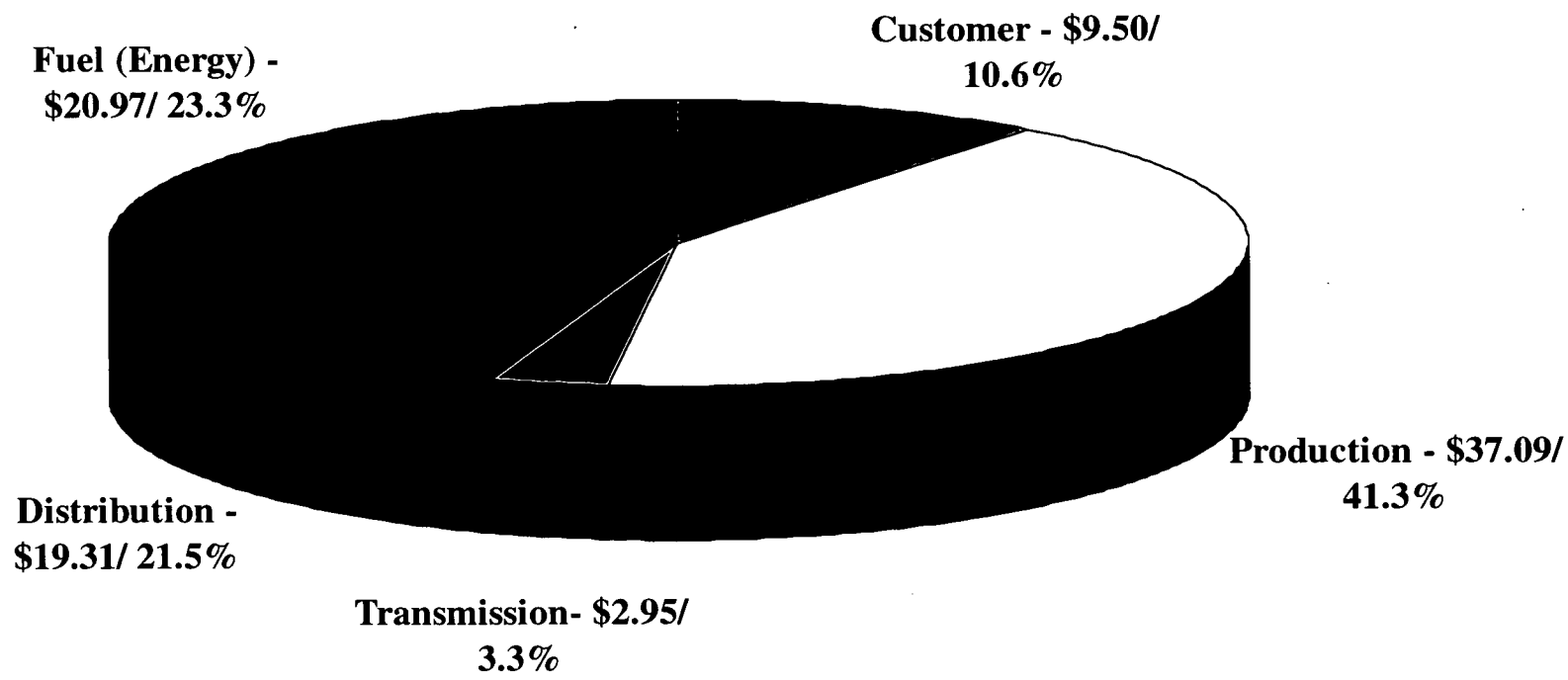
PROGRESS ENERGY RESIDENTIAL RATES
N.C.
Typical Residential 1,000 kWh Monthly Bill
Total $84.97



Dominion North Carolina Power

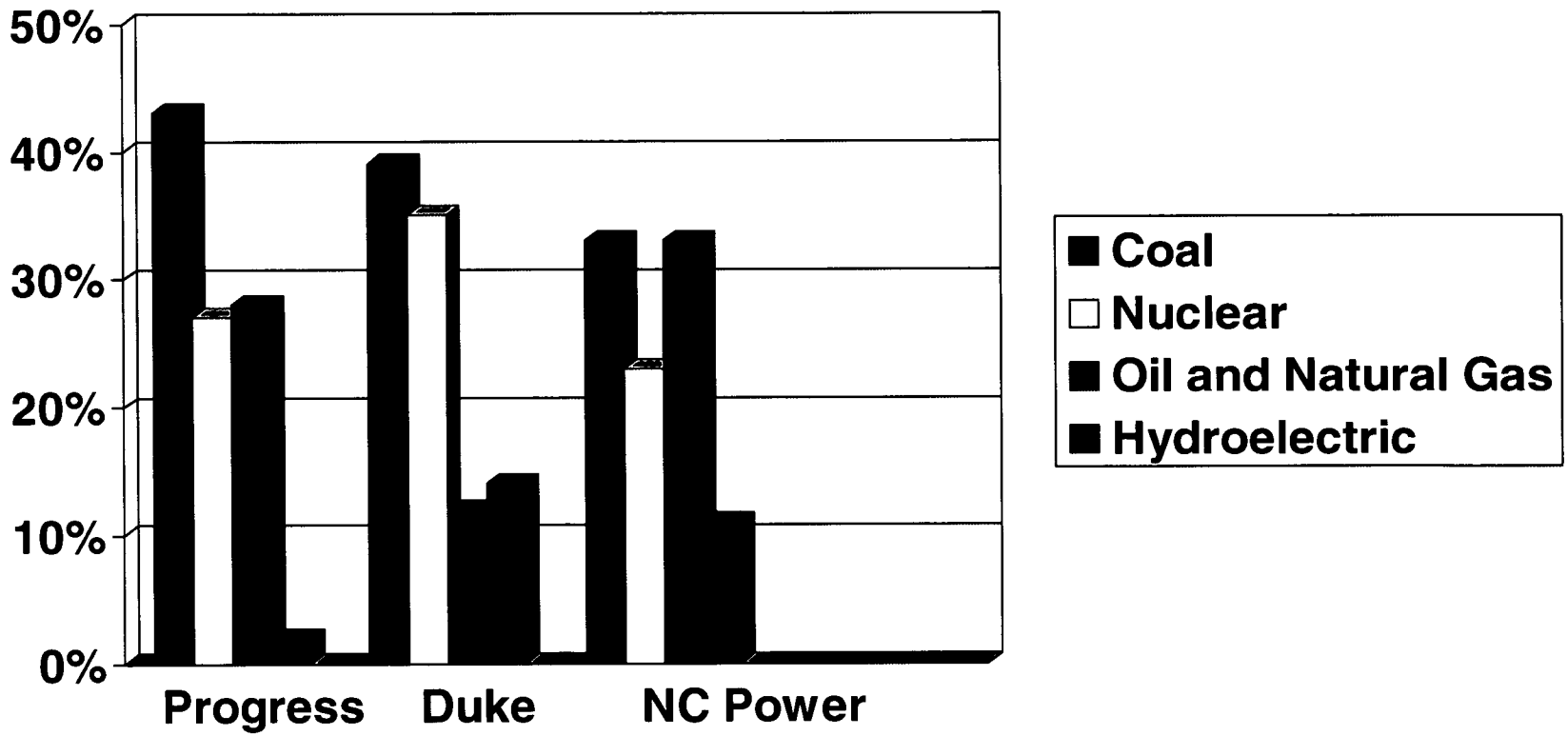
Typical Residential 1,000 kWh Monthly Bill

Total: $89.82



Note: Bill shown is weighted average of summer monthly bill and base monthly bill. Bill includes gross receipts tax but excludes any other state or local taxes.

Generating Capacity by Fuel Type



Projected Reserve Margins 2005-2014

Company	Reserve Margins
Progress	13 - 18%
Duke	17%
NC Power	12.5%

Basic Facts:
Fuel Mix Shift - Pros and Cons to Natural Gas

Pros	Cons
•Domestic fuel source – decreased dependence on foreign fuel resources	•Reduced fuel diversity- increased dependence on one primary fuel
•Lower capital costs	•Same trend across the country – growing demand
•More environmentally friendly, thus lower compliance costs than displaced fuel (coal, oil)	•Higher incremental production costs than coal
•Transportable and storable	•Supply unknown & limited storage (presently)
	•More susceptible to price volatility

Retail Electric Competition

- General Assembly decides whether electricity markets will be competitive
- In 1997, General Assembly formed Study Commission on the Future of Electric Service in NC to examine this issue
- In May 2000, the Study Commission adopted a tentative schedule for implementing retail competition by 2006
- National move towards retail competition has slowed dramatically---some states have retrenched from earlier aggressive positions

II Natural Gas
Basic Facts: Industry Structure

- Three parts of natural gas industry
  - Exploration and Production (E&P)
  - Interstate pipeline
  - Local Distribution Companies (LDCs)
- E&P companies not price-regulated
- Interstate pipeline rates fixed by FERC
- LDCs regulated by state commissions

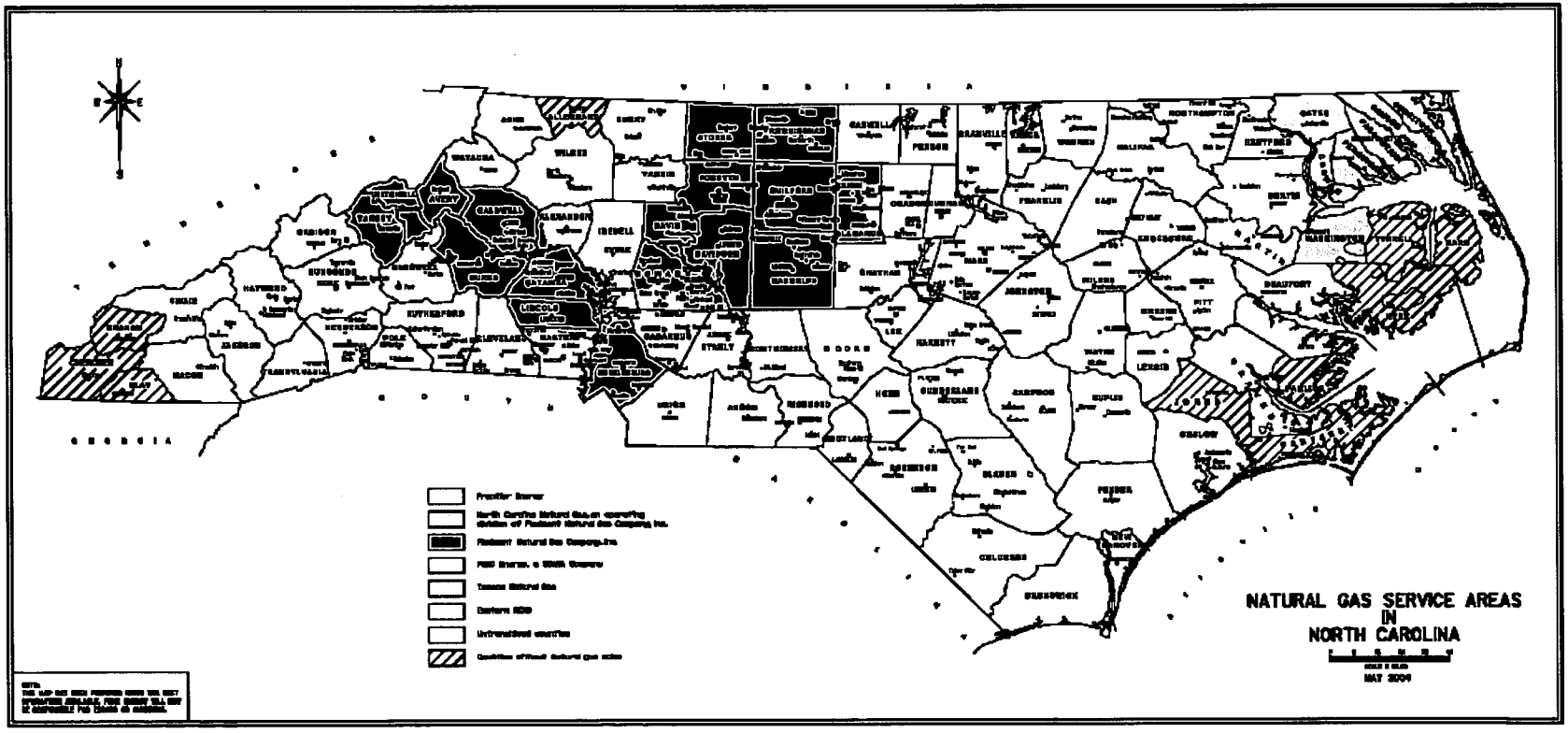
Basic Facts: Natural Gas Utilities

- Five Local Distribution Companies (LDCs)
  - Piedmont Natural Gas Company, Inc.
  - Public Service Company of N.C., Inc. (PSNC)
  - Frontier Energy, LLC
  - Toccoa Natural Gas
  - Eastern N.C. Natural Gas Company (Piedmont owns 50%)
- One Intrastate Gas Pipeline
  - Cardinal Pipeline Company, LLC
- Eight Municipal Gas Systems (not regulated by NCUC)
- One major Interstate Gas Pipeline (Transco) crosses the state
  - Two others (Columbia and Patriot) provide small volumes
- Legislative mandate of expansion into unserved areas

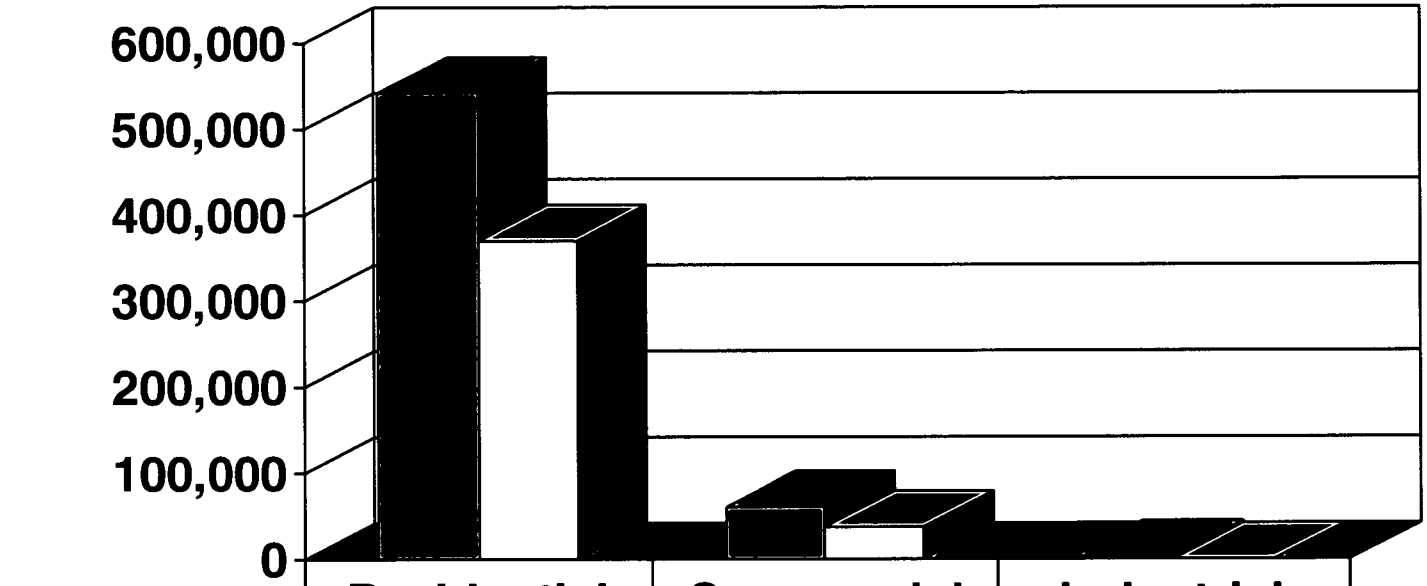
Basic Facts:
Recent LDC Mergers and Acquisitions

- In 1999, Progress Energy acquired NCNG
- In 1999, SCANA Corp. acquired PSNC
- In 2002, Piedmont acquired NUI NC Gas Service
- In 2003, Piedmont acquired NCNG and 50% interest in Eastern NCNG

Local Distribution Companies' Service Territories

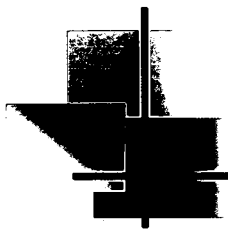


Local Distribution Companies' Customer Profile



	Residential	Commercial	Industrial
Piedmont	540,931	61,333	1,944
PSNC	370,532	38,101	444

State Regulatory Framework for Local Distribution Companies



Certification

- NCUC issues certificates defining LDC service territories
- Certificate obligates holder to provide adequate service at reasonable rates
- LDC must provide adequate service to some portion of each county in certificated area within three years
- If adequate service not provided within three years, Commission orders certificate forfeited

State Regulatory Framework for Local Distribution Companies *cont.*

Rates

- NCUC establishes level of base rates
- LDCs may file purchased gas adjustments at any time
  - to adjust gas cost portion of rates prospectively
- NCUC annually reviews each LDC's gas purchasing
  - to compare prudently incurred costs with costs actually recovered from customers and orders increments or decrements to "true up" under-recoveries or over-recoveries

Current Issues: Expansion into Unserved Areas

- Ten years ago, 1/3 of NC counties were unserved
- Natural Gas Expansion Fund law passed in 1991
  - Allows LDCs to subsidize uneconomic expansion projects using interstate pipeline refunds and other sources
- General Assembly authorized gas expansion bonds
  - In 1998
  - $200 million
- 30 counties have received or are to receive service using these mechanisms
- Four counties remain without service or plans for service

Current Issues:
Supply/Demand Imbalances

- Domestic supplies are falling as gas industry matures
- Demand for natural gas is rising
  - Huge new electric generation loads
  - U.S. economic recovery
- New supply sources being developed, but not yet ready
  - Imported Liquefied Natural Gas and Alaskan Gas Pipeline
- Electric demand may cause pipeline capacity problem
  - Generators consume large quantities of gas

Current Issues:
Natural Gas Price and Volatility

- Wholesale gas is now very expensive
  - Three to four times what it cost just a few years back
- Prices likely to be volatile in coming years
  as supply/demand imbalances shift

III Telecommunications Basic Facts

(As of 12/31/04)

- 16 Incumbent Local Exchange Companies (ILECs)
  - 8 ILECs price-plan regulated
  - 8 ILECs rate-of-return regulated
- 204 Competing Local Providers (CLPs)
  - Rates are not regulated; may raise rates after 14 days customer notice
- 437 Interexchange Long Distance Carriers (IXCs)
  - Senate Bill 814, signed into law on May 30, 2003, found long distance services sufficiently competitive to deregulate rates.

Basic Facts: Telecom Utilities *cont.*

(As of 12/31/04)

- 283 Payphone Service Providers (PSPs)
- 22 Shared Tenant Services (STS) Providers
- Commission does not regulate:
  - Telephone Membership Corporations
  - Cable and Satellite
  - Commercial Mobile Radio Service *(includes cellular and pagers)*
  - Data and Internet Service Providers
  - Rates of Long Distance Providers

Basic Facts: North Carolina ILECs

(As of 12/31/04)

- Largest NC Incumbent Local Exchange Companies (ILECs):
  - BellSouth - 1,915,062 access lines
  - Carolina Telephone (i.e. Sprint) - 1,131,132 access lines
  - Verizon South – 307,817 access lines
  - Central Telephone (i.e. Sprint) – 260,987 access lines
- Other 12 ILECs serve total of 537,676 access lines in NC

Basic Facts: North Carolina CLPs

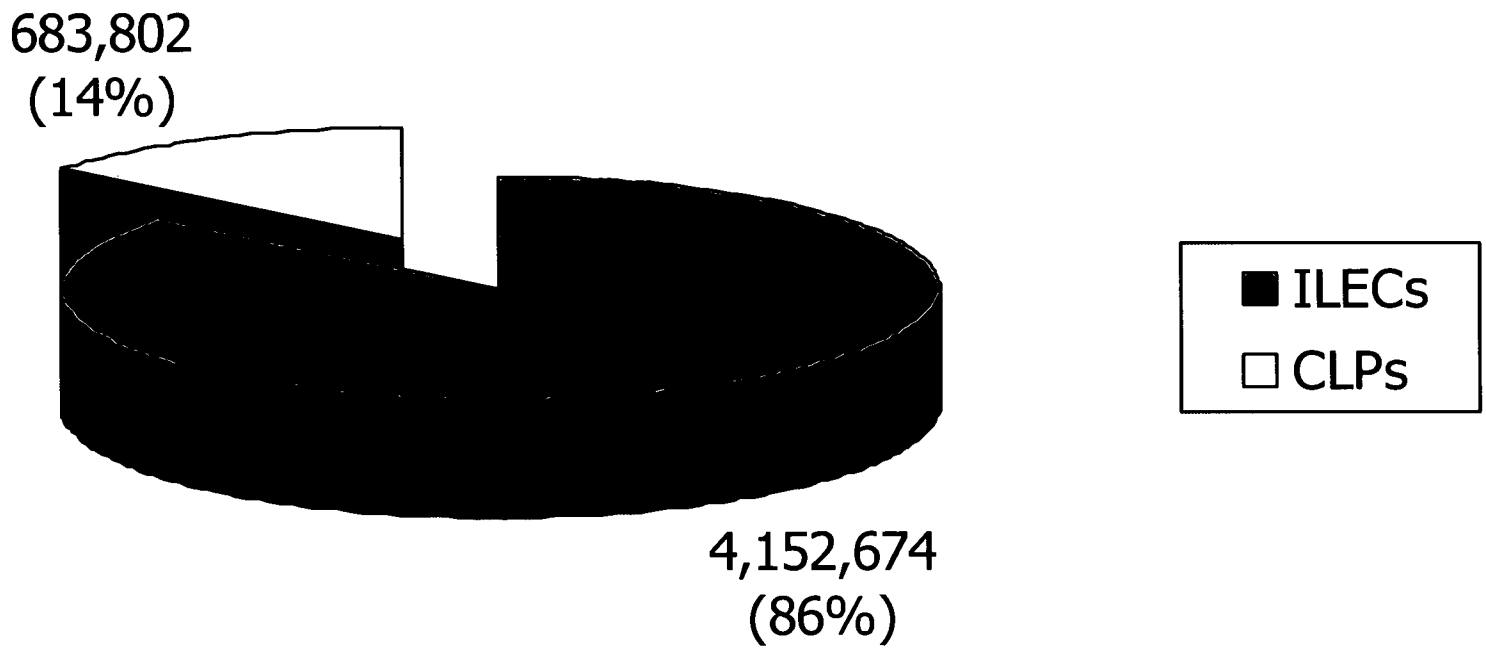
(As of 12/31/04)

- 204 Competitive Local Providers (CLPs) certified to provide local exchange service in NC

- 683,802 access lines served by CLPs
  - 240,051 residential
  - 443,751 business

Basic Facts:
Access Lines Served by ILECs & CLPs

(As of 12/31/04)

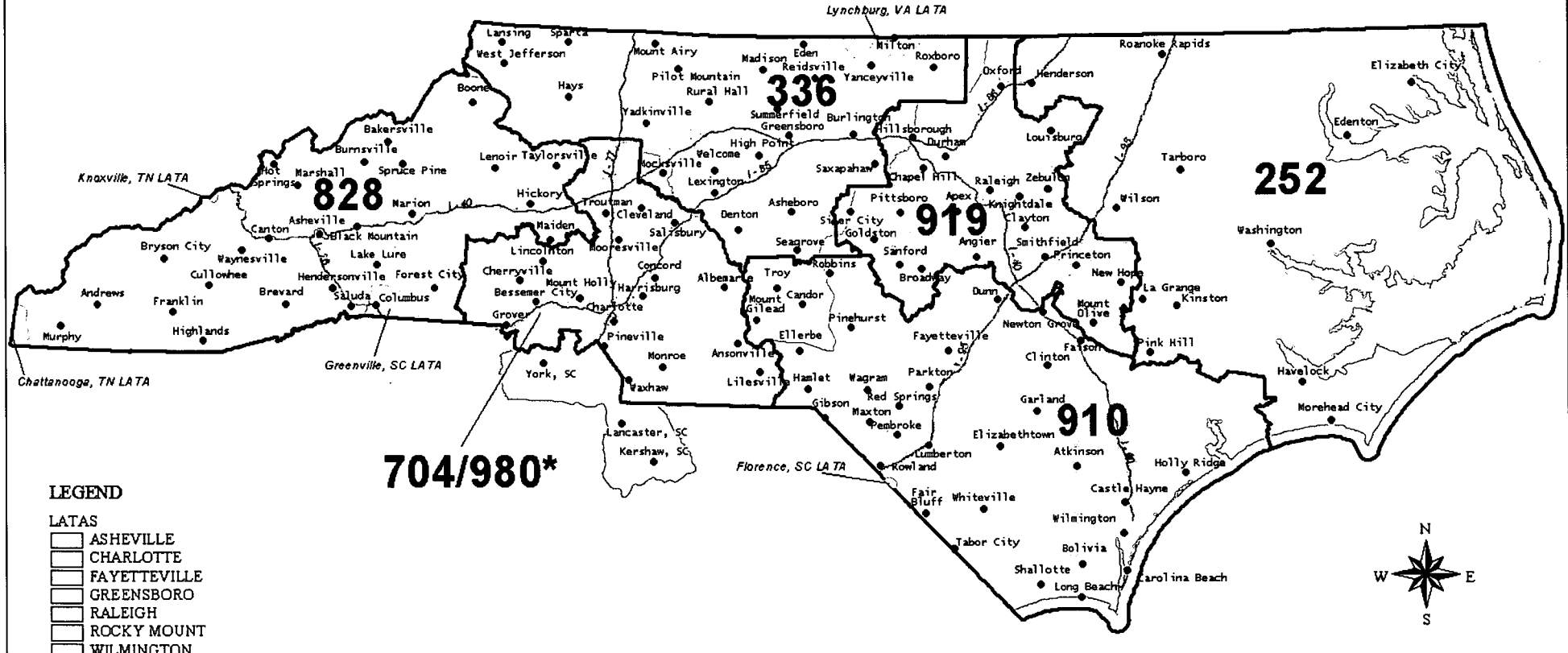


Basic Facts:
North Carolina Area Codes

Area Code	Exhaust Date*
919	3rd Qtr. 2006
336	2nd Qtr. 2010
252	4th Qtr. 2012
910	4th Qtr. 2009
828	3rd Qtr. 2010
704/980	4th Qtr. 2030
919/984	4th Qtr. 2032

** Exhaust dates are current projections which are subject to change.*

North Carolina - Area Code Map



LEGEND

LATAS
- ASHEVILLE
- CHARLOTTE
- FAYETTEVILLE
- GREENSBORO
- RALEIGH
- ROCKY MOUNT
- WILMINGTON
- OUT-OF-STATE LATAS

AREA CODE BOUNDARIES
INTERSTATE HIGHWAYS
CITIES

*Critical Dates Concerninig the Area Code 704/980 Overlay:
Permissive 10-digit dialing period begins - May 1, 2000
Mandatory 10-digit dialing begins (Permissive period ends) - November 1, 2000
Begin Using NXXs in Area Code 980 - December 1, 2000

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IV Transportation
Basic Facts

(As of 12/31/04)

- Motor Carriers of Household Goods
  - 254 Certificated Movers
  - New Certification Regulations Effective January 1, 2003
  - Maximum Rate Tariff Effective January 1, 2003
- Regular Route Passenger Carriers
  - 6 Certificated Bus Companies
  - Provide Passenger Service over Regular Routes
- Passenger Brokers
  - 25 Broker's Licenses
  - Brokers Tours and Trips with Existing Bus Companies
- Ferryboat Operators
  - 17 Certificated Ferry Boat Operators
  - Passenger Transportation Via Water

V Water and Wastewater Basic Facts

- Anyone furnishing water to the public for compensation or operating a public sewerage system for compensation is a public utility *(G.S. 62-3(23)a.2)*

- Regulation does not include –
  - Operations with less than 15 residential customers
  - Municipal or County systems
  - Sanitary Districts
  - Mobile Home Parks (where water/wastewater included in rent)
  - Homeowners' Associations
  - Nonprofit and consumer owned corporations

Basic Facts: Water/Wastewater Utilities

- NCUC grants certificates for specific service area and regulates rates and service aspects of utility operation

- NCUC does not regulate drinking water quality; requires compliance with DENR, Division of Environmental Health regulations

- NCUC does not regulate discharge of sewage being treated, but requires compliance with DENR, Division of Water Quality regulations

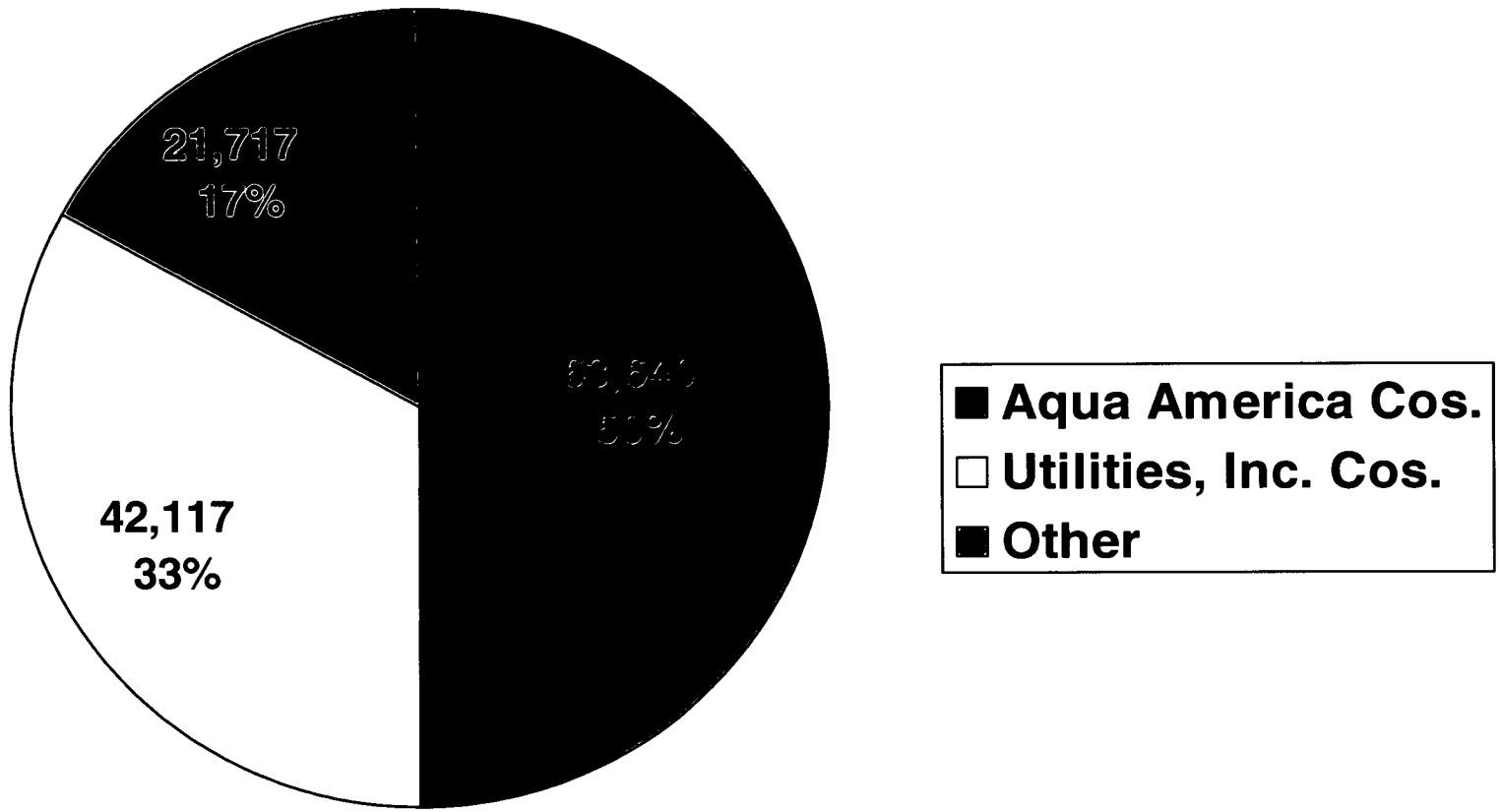
Basic Facts: Water/Wastewater Utilities *(As of 01/31/05)*

- Traditional Companies
  - 81 Water and Wastewater
  - 86 Water only
  - 45 Wastewater only
  - 127,474 Water and 61,304 Wastewater customers
- Resale Companies
  - 272 Water and Wastewater
  - 95,984 Water and Wastewater customers
- Traditional and Resale combined - 2,154 systems

Basic Facts: Water

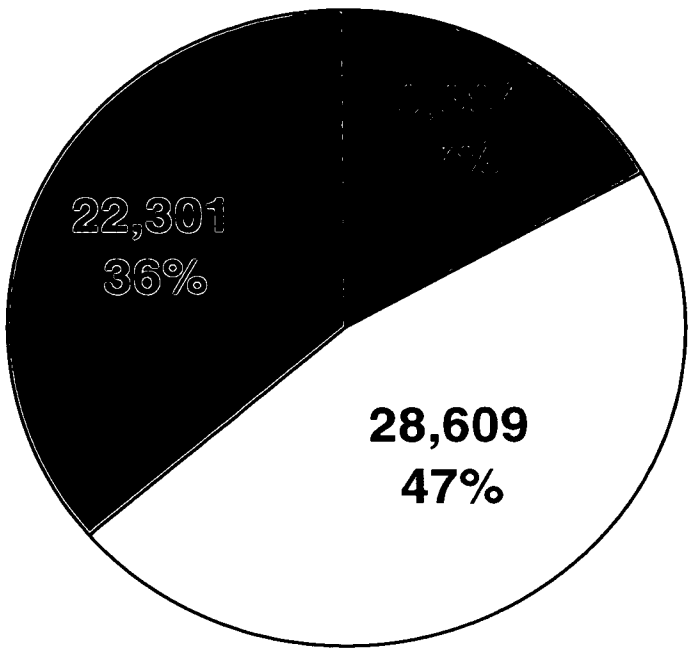
(As of 01/31/05)

Distribution of 127,474 Traditional Water Customers



Basic Facts: Wastewater *(As of 01/31/05)*

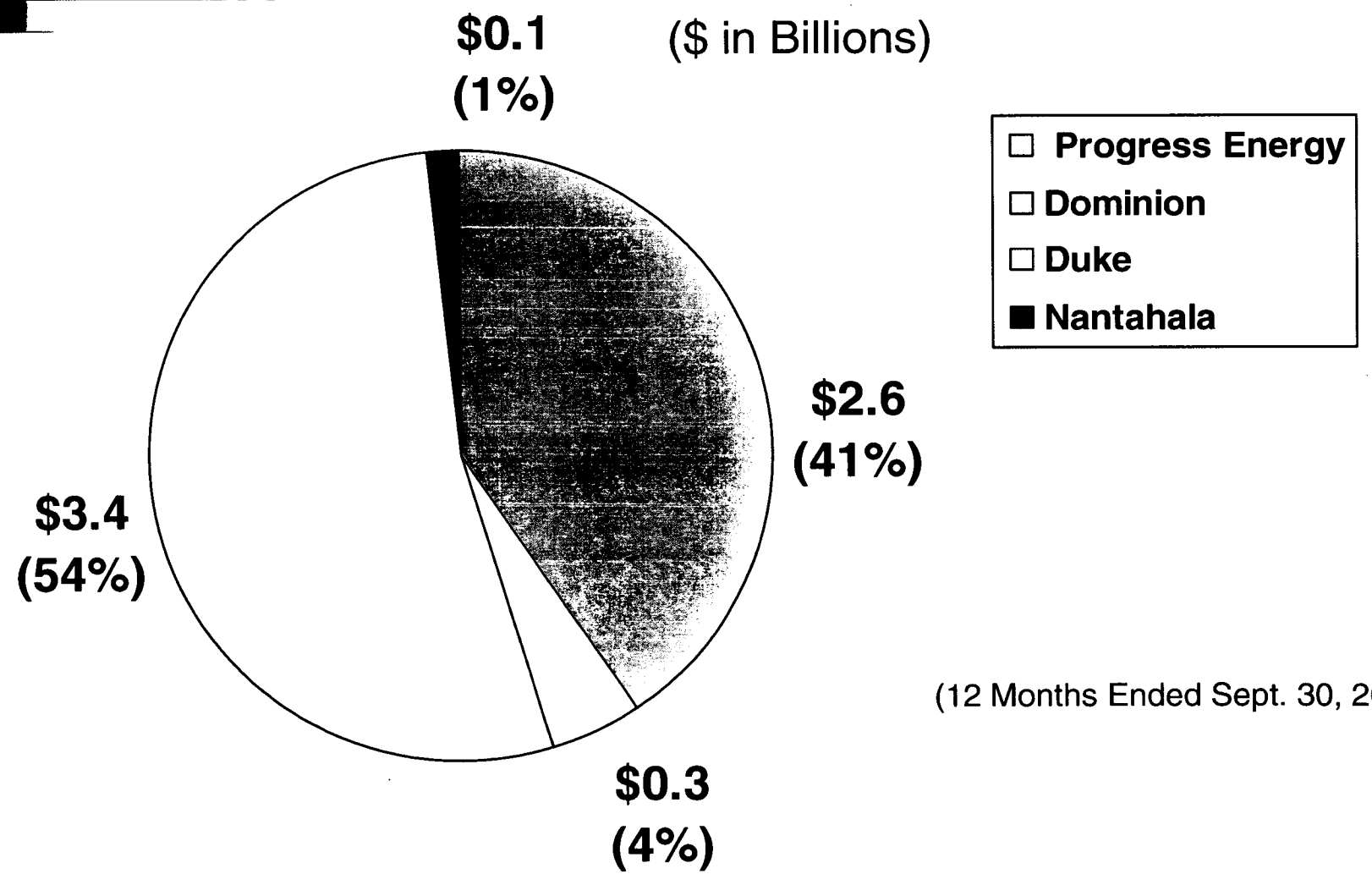
Distribution of 61,304 Traditional Wastewater Customers



VI Financials

Operating Revenues by Electric Utility ($6.4B Total)

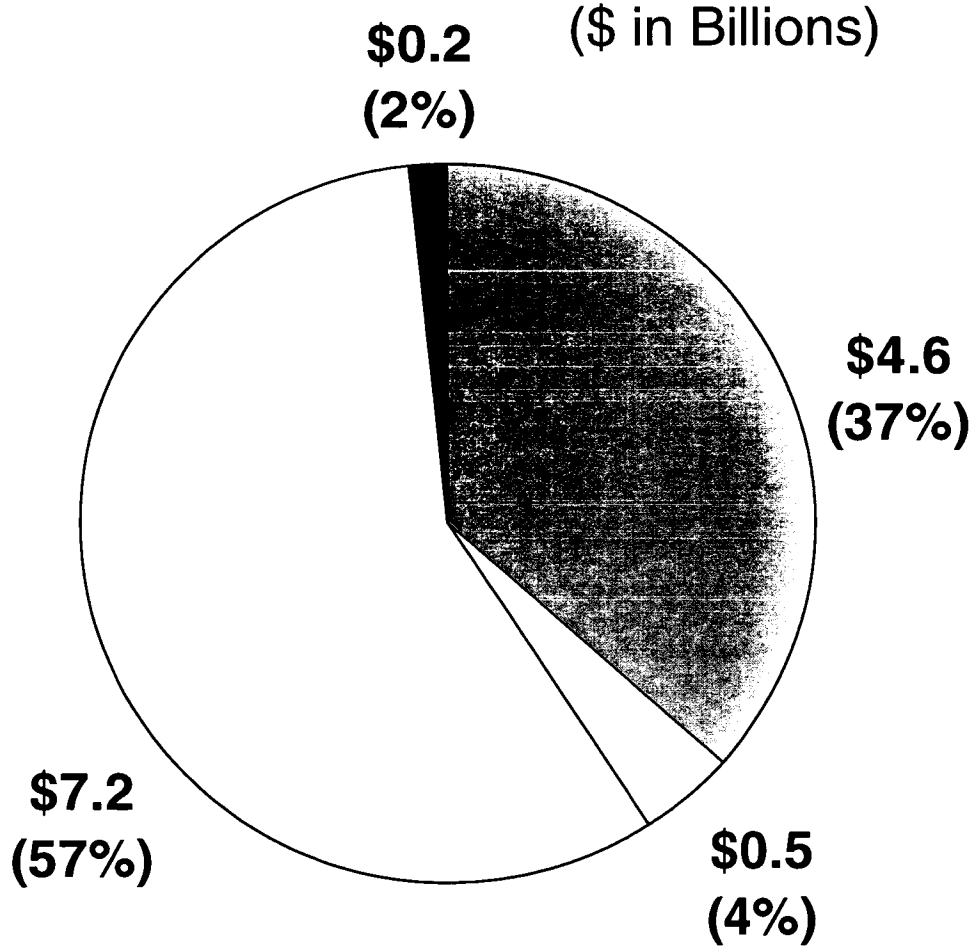
($ in Billions)



(12 Months Ended Sept. 30, 2003)

Net Plant Investment by Electric Utility ($12.5B Total)

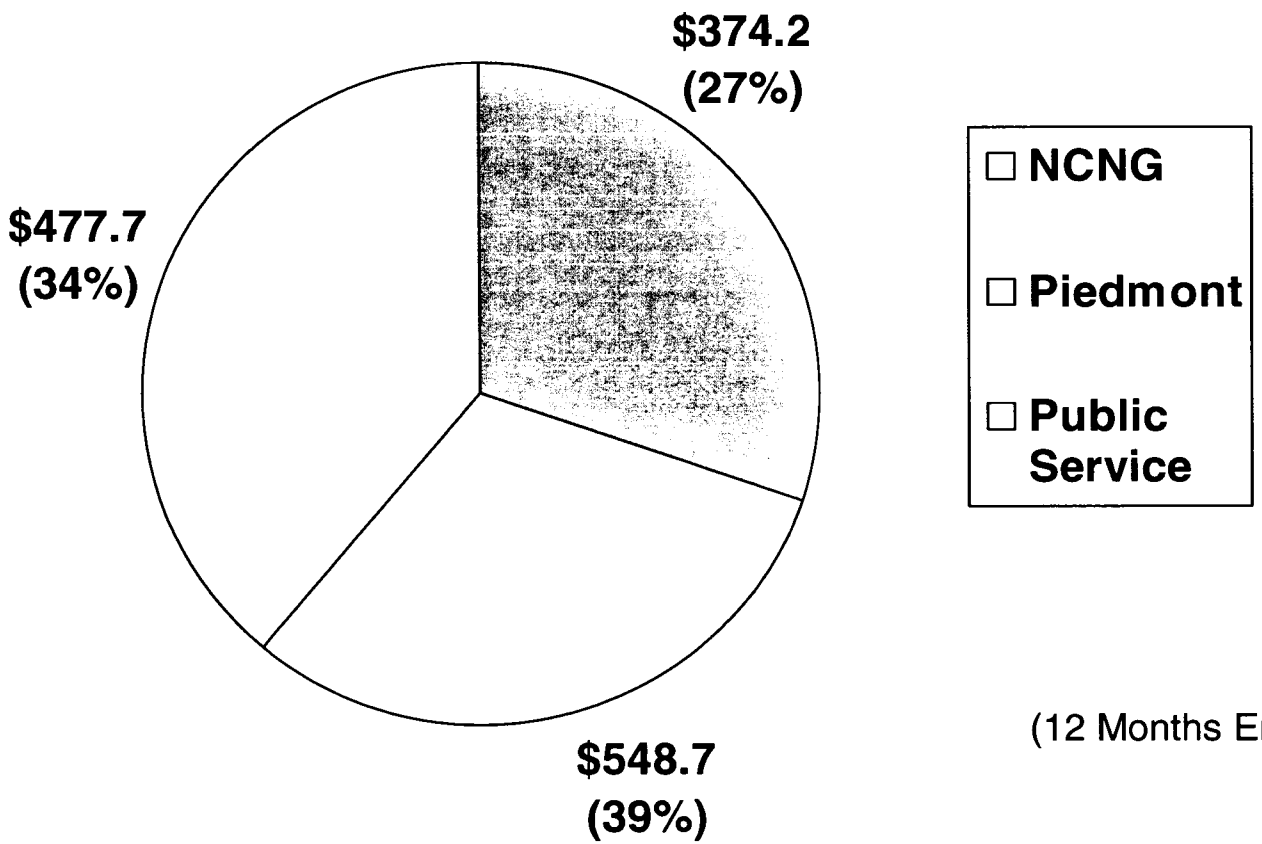
($ in Billions)



(12 Months Ended Sept. 30, 2003)

Operating Revenues by Natural Gas Utility ($1,400.6M Total)

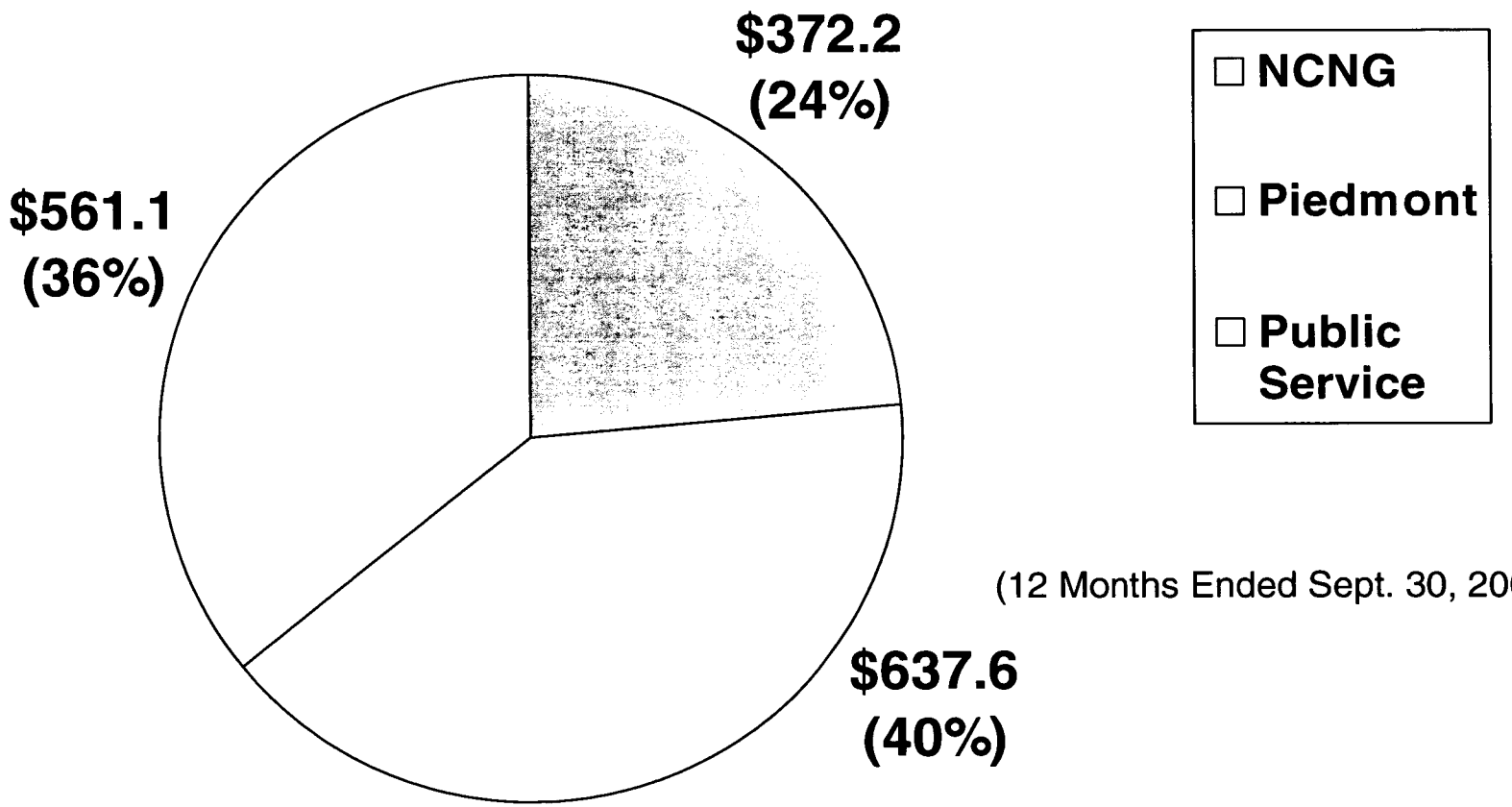
($ in Millions)



(12 Months Ended Sept. 30, 2003)

Net Plant Investment by Natural Gas Utility ($1,570.9M Total)

($ in Millions)



(12 Months Ended Sept. 30, 2003)

Telephone Utilities: Operating Revenues

(10 Largest Local Exchange Companies)

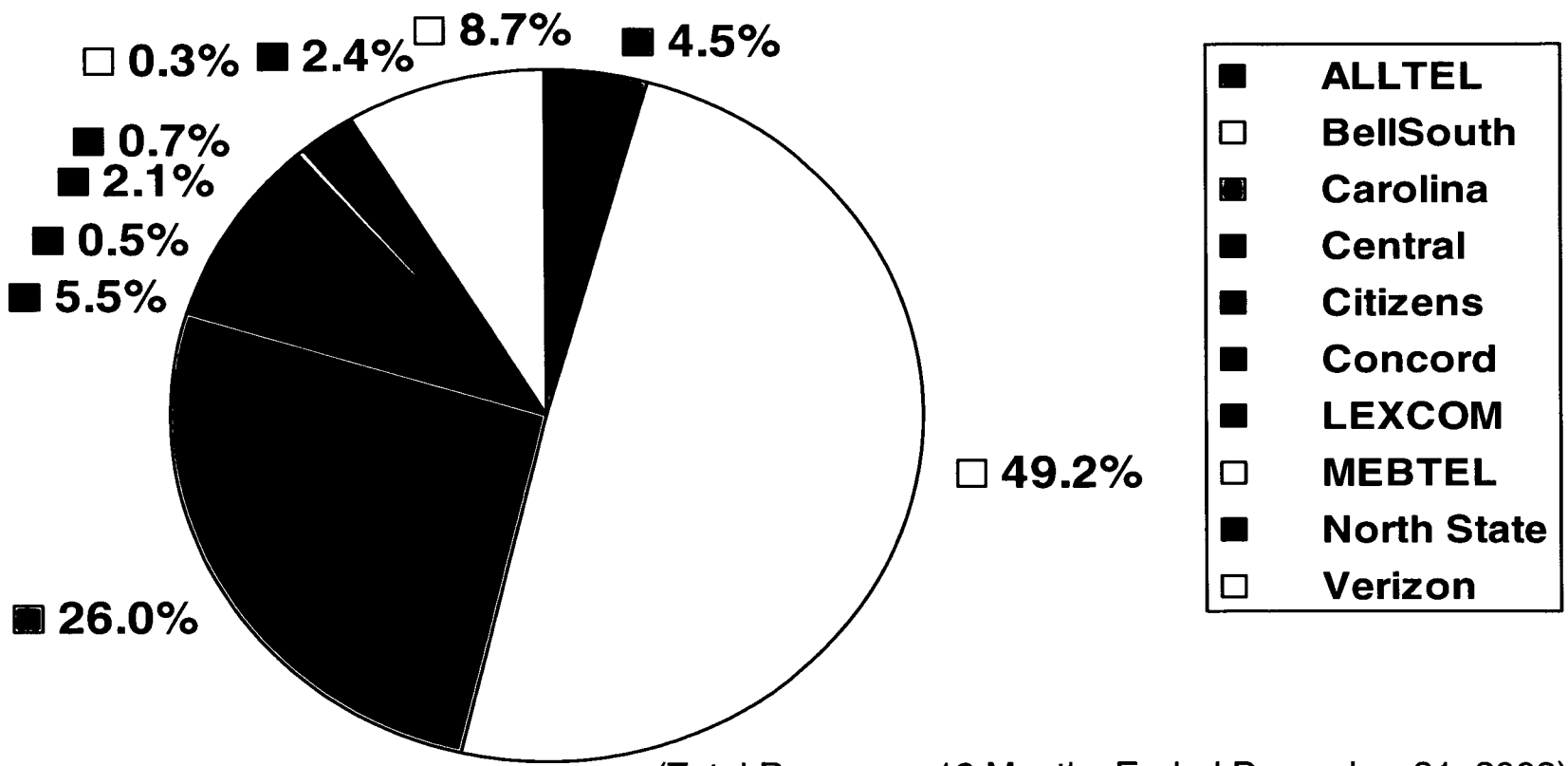
($ in Millions)

BellSouth	$ 1,641.1
Carolina	866.0
Verizon	290.9
Central	185.1
ALLTEL	151.7
North State	81.2
Concord	71.1
LEXCOM	22.7
Citizens	16.3
MEBTEL	10.1
Total	$3,336.2

(Total Revenue - 12 Months Ended December 31, 2003)

Operating Revenues

(10 Largest Local Exchange Companies – Percentages)



(Total Revenue - 12 Months Ended December 31, 2003)

Telephone Utilities: Net Plant Investment

(10 Largest Local Exchange Companies)

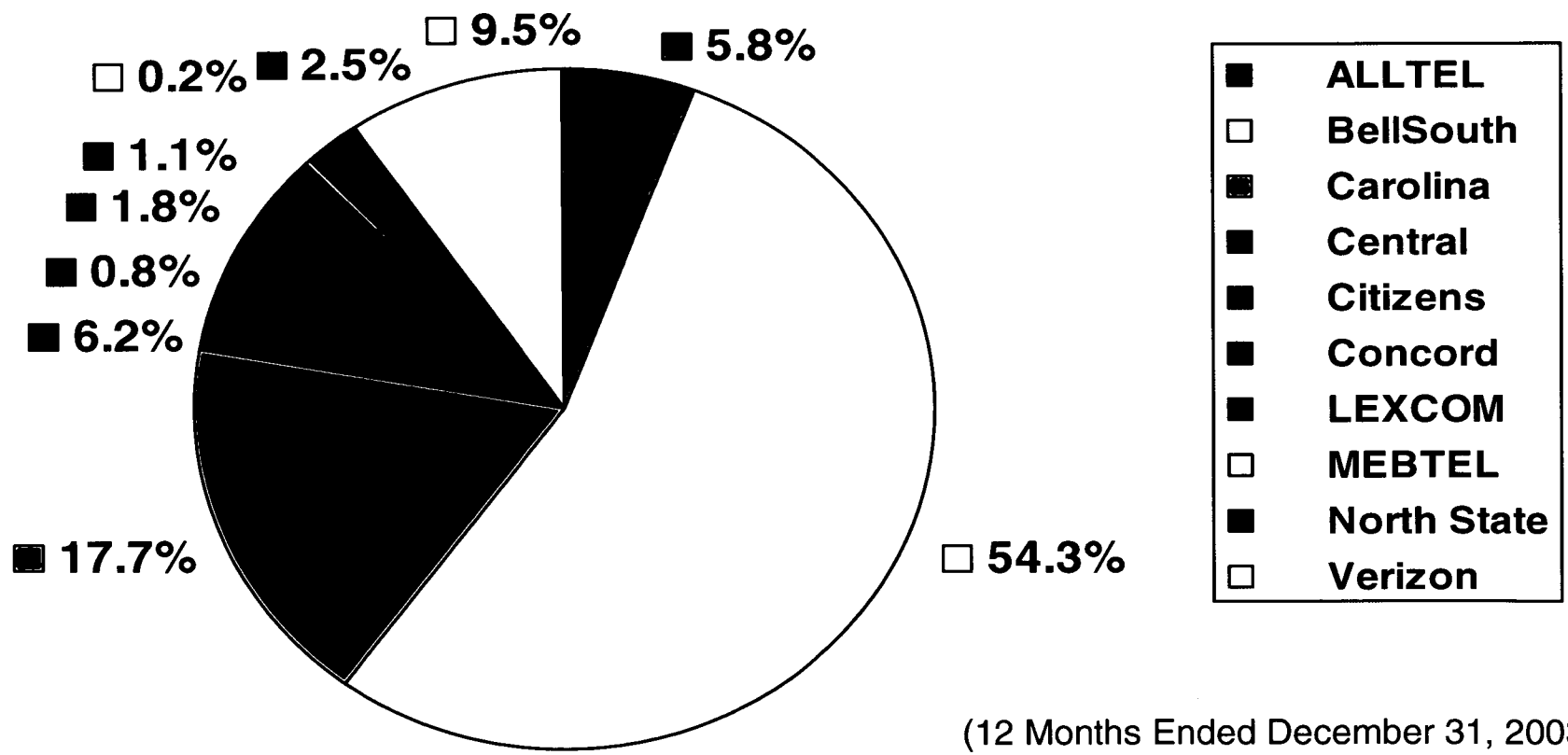
($ in Millions)

BellSouth	$ 2,452.0
Carolina	798.5
Verizon	428.7
Central	281.7
ALLTEL	260.1
North State	114.9
Concord	83.0
LEXCOM	50.4
Citizens	36.9
MEBTEL	10.8
Total	$ 4,517.0

(12 Months Ended December 31, 2003)

Net Plant Investment

(10 Largest Local Exchange Companies – Percentages)



(12 Months Ended December 31, 2003)

Major Issues

- Electricity
  - Transmission, nuclear waste disposal, Clean Smokestacks Bill & other environmental issues, Green Power, wholesale/retail competition, municipal debt
- Telecommunications
  - Transition to competitive marketplace, market failures, instability in competitive marketplace, broadband deployment, service quality, intercarrier compensation, universal service, corporate and technological convergence, technological innovation
- Natural Gas
  - Price volatility, supply, dominant position as fuel source for new generation, infrastructure expansion
- Water & Wastewater
  - Supply, environmental issues, industry consolidation
- Generic
  - Financial market pressures, storm impacts, emergency preparedness, accounting issues, merger conditions, tension at intersection of regulated and competitive activities of regulated companies

STATE BANKING COMMISSIONER'S OFFICE

Joseph A. Smith, Jr. – Commissioner

The Commissioner of Banks is responsible for the regulation of state chartered banks, savings banks and savings and loan associations, as well as other North Carolina lending businesses. Included within the authority of the Commissioner are the following businesses:

- Banks, savings banks, savings and loan associations
- Bank and savings bank holding companies
- Consumer finance companies
- Tax refund anticipation lenders
- Mortgage lenders, brokers and loan officers
- Money transmitters
- Reverse mortgage lenders
- Trust companies
- Check-cashing businesses

The Commissioner is appointed by the Governor and confirmed by the General Assembly for a four-year term. Mr. Smith was first appointed Commissioner of Banks on June 1, 2002 to fill an unexpired term. He was confirmed in 2003 for a four-year term ending March 31, 2007.

The Commissioner works with the State Banking Commission that consists of 23 members. The State Treasurer serves as the ex officio chair of the Commission. 19 members are appointed by the Governor, 5 of whom must be practical bankers, 2 CEO's of State savings institutions, and 11 representatives of the borrowing public. The General Assembly appoints 2 members, one a practical banker and one as a representative of the borrowing public. The members of the Commissioner serve 4-year terms.

Mr. Smith was asked to speak to the Commerce Committee because the Committee is responsible for much of the legislation affecting these financial institutions, including interest rate regulation and licensing, as well as being responsible for considering confirmation of the Commissioner of Banks.

Prepared by O. Walker Reagan
March 1, 2005

ATTACHMENT 4

State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

MICHAEL F. EASLEY
GOVERNOR

March 1, 2005

JOSEPH A. SMITH, JR.
COMMISSIONER OF BANKS

Senator R. C. Soles, Jr.
Chairman, Senate Commerce Committee
Legislative Building, Room 2022
Raleigh, NC 27601-2808

Dear Senator Soles:

Thank you very much for the opportunity of appearing before the Senate Commerce Committee to discuss the activities of the Office of the North Carolina Commissioner of Banks. In that regard, I enclose a summary sheet of those activities for your use and the use of the members of the Committee. From the Fact Sheet attached, you will see that my colleagues and I supervise or regulate 3,204 financial services firms with 7,201offices in North Carolina. This is done with a staff of 71 and annual expenditures of approximately $8.4 million, funded exclusively from assessments and fees charged to the firms we supervise or regulate. A further discussion of our activities follows.

Supervision of Banking Organizations.

As you are aware, banking is a significant business in and for North Carolina. As of December 31, 2004, assets of North Carolina-headquartered banks aggregated $1.3 trillion, making our state one of the banking leaders in the nation. Approximately 89% of that total is attributable to the two large national banks based in Charlotte, making the Queen City the nation's second largest banking center behind New York City. It should be noted that a significant portion of the banking assets controlled from within this state are located in other states, making banking an important export industry for North Carolina. Overall, banking represents approximately 10% of our gross state product.

The Office of the Commissioner of Banks supervises 88 state-chartered banks and thrifts that are responsible for over $135 billion in assets, or about 11% of the state total. These banking organizations range in size from $9 million to over $70 billion in assets, operating 2,889 branch offices here in North Carolina and 11 other states. Our state-chartered institutions include some of the oldest, largest, and strongest banks to be found anywhere in the country. Our state bank charter ensures enhanced competition and

benefit to consumers and small businesses in many communities across the state. To that end, the Office of the Commissioner of Banks has chartered nine new banks with an aggregate capital investment of over $86 million since my appearance here two years ago.

The Office of the Commissioner of Banks is also responsible for the supervision of non-depository trust companies. At present, we supervise 8 such institutions, 4 of which have been organized since I last spoke to this committee.

Mortgage Lending

Under the Mortgage Lending Act ("MLA"), our agency has issued licenses to 625 mortgage bankers, 775 mortgage brokers, and over 14,000 mortgage loan officers. Since I spoke to you last, we have denied, revoked, suspended, or subjected to conditions, licenses relating to over 1,200 firms and individuals who are subject to the MLA. A copy of my most recent report to Governor Easley with regard to these activities is attached for your reference.

Consumer Financial Services

The Office of Commissioner of Banks is also responsible for administration of the North Carolina Consumer Finance, Check Cashing, Money Transmitter, Refund Anticipation Lending, and Reverse Mortgage Lending laws, pursuant to which we currently license and regulate 1540 firms. During 2003, the consumer finance services offices regulated by our agency accounted for $59 billion in transactions.

Consumer Protection

Since I last appeared before the committee, our agency has enhanced its consumer complaints function by adding staff and upgrading our information management capacity. On average, our Consumer Assistance Group handles approximately 1,500 formal written complaints and roughly five times that number of informal complaints each year. Roughly two-thirds of our complaints for any period involve mortgage lending, with the majority of the remaining complaints relating to banking.

In order to better focus our consumer protection activities, the Office of the Commissioner of Banks has recently created a Consumer Affairs Division to integrate the Consumer Assistance Group and our Investigations function. Putting these activities together under one manager will help to focus our investigative activities on the most significant instances of bad conduct in the marketplace more quickly and effectively.

Challenges for the Future

Because of the dramatic growth of regulated financial services organizations, in terms of size and complexity, the Office of the Commissioner of Banks pursues its mission in a rapidly changing and competitive environment. To perform effectively, it is

essential that we attract, retain, and motivate a workforce that is competent, not only in traditional supervisory skills but in such new areas as enterprise risk management, capital markets (including derivatives), advanced capital assessment under the Basel II capital regime, and a variety of market surveillance techniques (particularly those related to the prevention of money laundering). Attracting new and highly skilled personnel and rewarding our current personnel for skill development will best be accomplished if our compensation scheme is more flexible than is currently allowed by the State Personnel Act. In the near future I will request that the General Assembly enact legislation exempting our agency from that statute so that we may begin a demonstration project, under the guidance of the Office of State Personnel, to revise our human resources processes, including compensation, in a way that meets our future needs. Your support of this initiative would be greatly appreciated.

A second challenge is to update North Carolina's banking laws. Chapter 53 is in particular need of a thorough review and revision. That chapter, as interpreted by my predecessors, has served this state well since its adoption in 1921; however, after over eighty years of piecemeal amendment, it needs to be brought up to date in a comprehensive way. To that end, I am requesting that the General Assembly appoint a legislative study committee to review all of our banking laws and to propose revisions in subsequent sessions. Working with representatives of industry and the bar, my staff and I hope to have a draft revision available for the committee to work with, should it wish to do so. Here, again, your support would be appreciated.

Conclusion

I believe that the Office of the Commissioner of Banks is built on a solid foundation of personnel, assets and know-how to fulfill the mandates given to us by the General Assembly. My colleagues and I look forward to working with the General Assembly in the future for the betterment of North Carolina and its citizens.

As always, I appreciate the honor of appearing before you.

Very truly yours,

Joseph A. Smith, Jr.
Commissioner of Banks

Attachments

Commissioner of Banks
Fact Sheet

[redacted]nks, Savings Banks, and Savings & Loan Associations

The North Carolina Commissioner of Banks regulates banks, savings banks, and savings & loan associations under N.C.G.S. 53 *et seq.*, 54B *et seq.*, and [redacted]C *et seq.* The primary purpose of these statutes is to ensure the safe conduct of banking business within the state, to maintain the public's confidence in the financial institutions, and to protect the institutions' depositors, debtors, creditors, and shareholders.

As of 12/31/04 we regulated:

68	Commercial Banks	2,819	branches
19	Savings Banks	70	branches
1	Savings and Loan Association		
8	State Trust Companies		
2	Trust Representative Offices registered		
42	Loan Production Offices registered		

As of 12/31/04 88 state-chartered financial institutions reported:

Total Deposits	$92,920,373
Total Assets	$135,134,481

Bank Holding Companies and Savings Bank Holding Companies

The Bank Holding Company Act of 1984 (N.C.G.S. 53-225 *et seq.*) requires certain bank holding companies to register with the Commissioner of Banks. Companies that control NC federally or State-chartered banks, or companies that control any non-bank subsidiary having offices located in the State are subject to the registration requirements.

As of 12/31/04 we had:

53	Bank Holding Companies registered
36	Bank Holding Companies registered/regulated
4	Savings Bank Holding Companies registered/regulated

Consumer Finance

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

As of 12/31/04 we had licensed:

11	General Lenders (lend $3,000 or less)
558	Optional Rate Lenders (lend $10,000 or less)
569	**Total Offices**

Refund Anticipation Loans

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

As of 12/31/04 we had registered:

731 Refund Anticipation Lenders 1,414 Offices

[redacted]rtgage Lenders, Brokers, and Loan Officers

The North Carolina Commissioner of Banks licenses all mortgage lenders, brokers and loan officers under N.C.G.S. 53-243.01 *et seq.*, unless exempt by statute. This statute became effective 7/01/2002, replacing the mortgage registration laws under Article 19 of Chapter 53. Registrants under the old law will receive "grandfathered" licenses during the first year.

As of 12/31/04 we had:

658	Mortgage Lenders with 1,199 branches
782	Mortgage Brokers with 302 branches
13,965	Loan Officers

Money Transmitters

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

As of 12/31/04 we had:

57 Money Transmitter Licensees

Reverse Mortgages

The Reverse Mortgage Act (N.C.G.S. 53-255 *et seq.*) authorizes the Commissioner of Banks to approve reverse mortgage lenders. Even though banks, savings institutions, and credit unions are exempt and do not have to obtain the Commissioner's approval, nevertheless they must notify him of their intent to offer reverse mortgages. Reverse mortgages are available to homeowners over 62. They provide monthly loan advances which are repaid upon death or the sale of the house.

As of 12/31/04 we had approved:

6	Reverse Mortgage Lenders
14	Exempt Lender

Trust Licenses

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

As of 12/31/04 we had:

44 Trust Licensees

Check-Cashing Businesses

[redacted]nder N.C.G.S. 53-275 *et seq.*, persons or other entities providing check-cashing services [redacted] fee, service charge, or other consideration must be licensed by the Commissioner of [redacted]ks. The law sets maximum fees for the check-cashing service.

As of 12/31/04 we had:

163 Licensees 1,397 Locations

State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

MICHAEL F. EASLEY
GOVERNOR

JOSEPH A. SMITH, JR.
COMMISSIONER OF BANKS

September 9, 2004

The Hon. Michael Easley
Governor, State of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Dear Governor Easley:

This letter will summarize the activities of the Office of Commissioner of Banks ("OCOB") to administer and enforce the Mortgage Lending Act ("MLA") during the year ended June 30, 2004. It will also identify areas of concern to OCOB regarding the mortgage lending industry for the current year and beyond.

Licensing

The MLA requires that mortgage lenders, brokers and loan officers, other than exempt persons (such as depository institutions and their employees) must be licensed to engage in mortgage lending or brokerage. The year ended June 30, 2004, was the second year of such requirement and, accordingly, licensing activities involved the renewal of previously granted licenses and the issuance of new licenses.

During the period in question, OCOB staff approved renewal applications for 550 mortgage lenders, 650 mortgage brokers and 9,525 loan officers (of whom 1,100 are inactive). In addition, 350 "exclusive broker" licenses and 1,050 "limited loan officer" licenses were renewed. New licenses were issued during the period for 75 mortgage lenders, 125 mortgage brokers, and 3,500 loan officers. While the number of active licensees had varied during the period in question, there is no evidence whatsoever that North Carolina's anti-predatory lending law and the MLA have had any adverse effect on the number of competitors in the marketplace.

During the period July 1, 2003 to June 30, 2004, OCOB staff denied 406 applications for licensure under the MLA. Of these denials, (i) 158 were not appealed or pursued and are final; (ii) 149 were resolved through issuance of a license after further review and, in some cases, correction of the relevant applications; (iii) 80 were appealed to the Commissioner and (iv) 19 were in process. During this period, 122 appeals (including some appeals from the prior year) were heard by the Commissioner, resulting in 54 affirmations of denials and 68 orders overturning denials and allowing the issuance of licenses. At that date, 19 appeals remained to be heard. Eleven decisions of the Commissioner regarding these denials have been appealed to the Banking Commission to date. All but one of such appeals have resulted in the affirmation of the Commissioner's decision. One decision was reversed to affirm the OCOB staff's denial of a license. Four denials have been appealed to Wake County Superior Court. Of these four appeals one is still pending in the Wake County Superior Court and the remaining three were upheld by the court and have now been appealed to the North Carolina Court of Appeals.

In addition, during the year ended July 30, 2004, Mortgage Division staff proposed the revocation of 62 licenses because of (i) false or misleading statements in the licensees original or renewal applications or (ii) activities by licensees in violation of North Carolina law. Of the 62 proposed revocations: (i) 30 were overturned after a hearing, as a result of which the license remained in effect; (ii) two licensees were suspended; and (iii) 30 licenses were revoked or surrendered. As our enforcement activities, discussed below, continue, it is likely that the number of revocations and suspensions will increase.

In my report to you last year regarding OCOB's mortgage activities, I said that improvement of the efficiency and effectiveness of licensing, both renewals and new applications, was a major objective of the agency. Thanks to prudent investment in new technology and the diligent efforts of OCOB Mortgage Division staff, led by director George King, I believe that we have made substantial progress on this objective.

Examinations

The MLA authorizes OCOB to conduct examinations of mortgage lenders and brokers to ensure compliance with the statute and other laws relevant to mortgage lending. Implementation of an examination program was an objective for future action in my last report to you. During the year ended June 30, 2004, OCOB staff organized examination teams and developed an examination protocol. Implementation of our examination program began in the spring of 2003 and, under a newly appointed examination team leader, the pace of examinations will increase during this year.

Enforcement

Enhancement of our investigation function was also an objective stated in my last report. Enforcement continues to be a priority for OCOB. During the year ended June 30, 2004, over 1,100 of the 1,500 formal consumer complaints received by this agency related to residential mortgage transactions. These complaints related to a variety of circumstances, but the message

from the marketplace is clear: more work on mortgage lending needs to be done. OCOB investigative personnel are fully employed, both in matters conducted by this agency alone and in concert with other agencies of state government and both state and federal law enforcement. During this year, I have asked our investigators to focus on high-impact cases involving material breaches of our laws and mortgage fraud.

Conclusion

The mortgage lending industry in North Carolina continues to be large, diverse and very competitive. A great deal of hard and effective work has been done by my colleagues in OCOB's Mortgage Division, but much remains to be done. In addition to our continuous efforts to improve our operations, we will be looking at ways to enhance our efforts with regard to the regulation of interstate mortgage operations, which account for roughly one-third of the firms serving North Carolinians today. I believe that we have had substantial success during the last year in enforcing the MLA and policing the mortgage market generally. My colleagues and I look forward to continuing these very important activities in the future.

Very truly yours,

Joseph A. Smith, Jr.
Commissioner of Banks

JAS/is

Cc: The Hon. Richard H. Moore
Chairman, State Banking Commission

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 1, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Linda Cheatham	BellSouth
[illegible]	[illegible]
Bill Pittman	Pittman Law Firm, PLLC
Johnny Tillett	J Tillett Lobbying Group
MICHAEL THOMPSON	DOMINION
[illegible]	[illegible]
[illegible]	BellSouth
Kathy Hawkins	Progress Energy
BILL SCOGGIN	KCCH
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 1, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
David Hanson	N.C. Office of Commissioner of Banks
Reitzel Deaton	NC Office of Commissioner of Banks
Nancy Rhue	NC Office of Commissioner of Banks
KEN RUDDER	NC UTILITIES COMM — PUBLIC STAFF
Lynn Pearce	NC Utilities Comm. - Public Staff
Geneva Thigpen	NC Utilities Commission
Bill Gilmore	NC Utilities Commission
Sam Kirby	"
TONOLA BROWN-BLAND	NCUC
Kevin Mills	Senator Purcell's Office
Lorinzo Joyner	NCUC
Stacy Flannery	NCLCFA
Barbara Carlton	BSCOR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 1, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Bridget Paschal	N.C. Utilities - Staff
Bliss Kite	N.C Utilities - Commission Staff
Don Hoover	✓ ✓ ✓ ✓
Paul Kase	TWC
Tripp Melton	Sen. Stevens Intern
Kory Isenhour	Intern Sen P. Berger
Mitch Williams	Progress Energy
ANDREW HOLTON	Sen. Garrou's office
NANCY REED	SELF
Dana Simpson	Smith Anderson
Dwight Allen	Smith Anders-

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 1, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Don Harrow	Piedmont Natural Gas
Mac Carpenter	NCCMSA
Paul Wilms	NCCMSA
Jeff VAN DYKE	BST
Robert Kaylor	Kaylor Law Firm
Joe Johnson	Progress Energy
Bill Bost	" "
Andy Ellen	NCRMA

Senate Commerce Committee
Tuesday, March 15, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SJR 426	Confirm Howard Lee to Utilities Commission.	Senator Soles, Jr.

Presentations

Secretary James T. Fain, III, Department of Commerce

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, March 15, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 15, 2005, in Room 1027 of the Legislative Building. Twenty-one members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Keifer Fitz-Wynn from Raleigh, sponsored by Senator Vernon Malone; and Anna Barbara Adams from Dunn, sponsored by Senator Harris Blake.

Senator Soles then introduced Mr. Franklin Freeman to present Mr. Howard N. Lee to be confirmed as a Utilities Commissioner as appointed by Governor Michael Easley to fill the vacancy left by Mr. Mike Wilkins. Mr. Lee spoke to the committee, requesting confirmation of his appointment. Several senators, including Senator David Hoyle, Senator Tony Rand, Senator Harris Blake, and Senator Walter Dalton, spoke in favor of Mr. Lee's confirmation. Senator Hoyle moved a favorable report of Senate Joint Resolution 426, Confirm Howard Lee to Utilities Commission. The motion carried unanimously.

Senator Soles introduced Mr. James T. Fain, III, Secretary of the Department of Commerce, to make a presentation to the committee of the mission of the Department and their legislative proposals for the biennium. (See attachments.) Mr. Fain told the committee that some of the incentive grants (the One NC Fund and the Job Development Investment Grant Fund) have been successful in growing businesses already existing in the state as well as bringing new businesses into the state.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, March 15, 2005

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

FAVORABLE

S.JR. **426** Confirm Howard Lee to Utilities Commission.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE JOINT RESOLUTION 426*

Sponsors: Senators Soles; and Atwater.

Referred to: Commerce.

March 9, 2005

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF HOWARD N. LEE TO THE UTILITIES COMMISSION.

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

Whereas, a vacancy has occurred on the North Carolina Utilities Commission due to the resignation of Michael Wilkins; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Howard N. Lee, to serve the remainder of the term expiring June 30, 2009, on the North Carolina Utilities Commission; Now, therefore,

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

SECTION 1. The appointment of Howard N. Lee to the North Carolina Utilities Commission for the remainder of the term expiring June 30, 2009, is confirmed.

SECTION 2. This resolution is effective upon ratification.

Biographical Profile
For

Howard N. Lee

Chairman, NC State Board of Education
109 Glenview Place
Chapel Hill, NC 27524
919-942-9528

Born July 28, 1934, Howard Nathaniel Lee grew up on a sharecropper's farm in Lithonia, Georgia. He attended school there and graduated in 1953. He then attended Fort Valley State College in Georgia where he received a BA degree in Sociology in 1959. He served in the United State Army, including more than one year in Korea from 1959 until 1961. After his service in the Army, he worked as a Juvenile Probation Officer in Savannah, Georgia, until 1964, at which time Lee enrolled in the graduate School of Social Work at the University of North Carolina at Chapel Hill. In 1966 he received his Master's Degree in Social Work.

Lee immediately became politically active upon arrival at the University of North Carolina in Chapel Hill, being elected each of his two years of graduate school as president of the Student Association of Social Work. After graduate school he made history by becoming the youngest and most recent graduate to be elected President of the NC Chapter of The Professional Association of Social Work. In 1969, Lee made history again by being elected Mayor of Chapel Hill and holding the office until 1975. In 1976, he was a candidate for Lt. Governor of North Carolina, but lost in a second primary, which was a bitter and contentious fight. After the loss, Governor Jim Hunt appointed him Secretary of the Department of Natural Resources and Community Development, a cabinet-level post he held until 1981.

Lee has a strong academic background, having served as a member of the faculty staff and an administrator at Duke University; a faculty member of North Carolina Central University; and a faculty member of the School of Social Work, University of North Carolina at Chapel Hill. He has also been a visiting faculty member and lecturer at numerous major universities through the Nation. Lee has contributed chapters to several books and has published articles in many professional publications.

In 1990, Lee was elected to the North Carolina Senate where he served for 13 years. During his tenure he held several powerful committee chairmanships; presiding over education and transportation including the Senate Appropriations Committee. During his time in the NC Senate, Lee built his legacy as a fighter for education reform and increased funding. He not only fought for higher teacher salaries and more funding for public education, but he also fought to raise teacher and student standards. In addition, he sponsored or co-sponsored several major pieces of educational legislation which included Smart Start, More at Four (a Pre-kindergarten program), the Excellent Schools Act for school reform, and the Safe Schools Act.

Howard Lee has a strong background in business, having founded five successful companies. In addition to his role as State Board Chair, he is a Senior Advisor at the Jim Hunt Institute for public policy of UNC. His favorite hobbies include golf, tennis, singing, and creative writing. He is currently writing his memoir entitled *Barrier Breaker and Bridge Builder* and a motivational book entitled *Silent Dreams and Secret Thoughts*. Howard and his wife Lillian, a retired public school teacher, live in Chapel Hill and are the proud parents of three grown children (Angela, Ricky and Karin) and have two granddaughters.

SJR 426:
Confirm Howard Lee To Utilities Commission

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Soles
Date:	March 15, 2005	**Summary by:**	Steven Rose
Version:	1st Edition		Committee Counsel

SUMMARY: ***Howard N. Lee has been appointed by the Governor to fill the vacancy on the Utilities Commission created by the resignation of Michael Wilkins. Mr. Wilkins' term commenced July 1, 2001 and expires June 30, 2009. If confirmed, Mr. Lee would serve the remainder of that term. SJR 426 confirms this appointment as required by G.S. 62-10. The resolution is effective upon ratification.***

Mr. Lee's biographical narrative, and the Statement of Economic Interest and Multiple Board Supplement he submitted to the North Carolina Board of Ethics are before this Committee. The Governor's letter of appointment is also before the Committee.

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

A Utilities Commissioner is presently paid a salary of $107,136 annually (the same as a Superior Court Judge). There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years.

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

A Commissioner may not engage in any other employment, business, profession or vocation. G.S. 62-11(i) provides, in part: *"Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office."*

During the term of office a Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

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

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

the services of public utilities. Again, the extent of the Commission's jurisdiction depends upon the type of utility service and is affected in some cases by federal law. The Commission also has limited authority over electric cooperatives and their subsidiaries, and municipalities.

The resolution is effective upon ratification.

MULTIPLE BOARD SUPPLEMENT

to the

Statement of Economic Interest

Office Use Only
Bd Code _____
Appt by _____
Date filed:

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail: nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009J, Raleigh

The Governor's Executive Order on ethics requires that all covered Public Officials file a sworn Statement of Economic Interest ("SEI" or "Statement") with the Board of Ethics. These Statements must be updated annually. At the *beginning* of their public service, all new filers (those who have never filed a full and complete SEI under the current Order) *MUST* submit a full and complete SEI ("Long Form"), answering each question. Thereafter, returning filers have several options.

This "Multiple Board Supplement" is for those Public Officials who (1) have been appointed to a covered board under the Order, (2) have already filed a current, complete Statement of Economic Interest providing all required personal, familial, and financial information, and (3) have now been appointed to ***another* covered board**. Rather than filing another Statement of Economic Interest "Long Form," these Public Officials may *supplement* their current information by answering the three (3) board-specific questions listed below about their *second* board. They must also provide the following general identifying information:

Name of Person Filing: Howard N. Lee

Name of Board on which you are *currently* serving: N. C. Utilities Commission

and

Name of the ***Second*** Board on which you are or will be serving: NC Board of Education

E-Mail Address: hlee@NC.rr.com

If you have been appointed to a second covered board or commission, you may, but do not have to, file another complete Statement of Economic Interest "Long Form." You may **NOT** file a "No-Change" Form ("Short Form"). Please sign, date, and have your form notarized before returning it to the Board of Ethics at the above address. ALL FORMS MUST BE PROPERLY EXECUTED AND NOTARIZED.

Please answer the following three (3) questions from the Statement of Economic Interest "Long Form":

(iii) Are you, your employer, your spouse, or spouse's employer **licensed or regulated** by the Board on which you are/will be serving, or have business relationships with the Board? Answering "yes" does *not* disqualify you from service. See the attached cover sheet. No ✓ Yes ___ If "yes," please explain:

_____

_____

_____

5. You are required to make a good faith effort to identify and list any individual or business entity with which you or your spouse have a financial or professional relationship (including service on a board of directors or other leadership or policy-making body) provided a reasonable person would conclude that **either**

   (1) The *nature of such relationship* presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, **or**

   (2) Such individual or business entity's *other financial or professional interests* (separate and distinct from yours) would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties.

   For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed. **Please indicate "None" or "Not Applicable" if appropriate.** None

16. Having read the Order in general and the "Rules of Conduct for Public Officials" in particular, provide **any other information** which a reasonable person would conclude is necessary or helpful either to carry out the purposes of the Order or to fully disclose any potential conflict of interest or appearance of conflict. Identify any conflicts or potential conflicts you may have that are not fully or adequately covered elsewhere in this form. Include an explanation of how you would propose to resolve any conflicts or potential conflicts.

None

VERIFICATION OF ANSWERS

I hereby certify that I have read the Executive Order on ethics and this form, and to the best of my information, knowledge and belief, the above answers are true, correct, and complete, and OTHER THAN AS INDICATED ON THIS FORM, there have been **no other material changes** to my personal, familial, or financial situation which would require disclosure pursuant to the Order, and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest and this Multiple Board Supplement thereto. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

3-7-05
Date

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Johnston

Subscribed and sworn before me this the 7th day of March, 2005.

My Commission Expires: 4-4-08

Joy O. Dry
Notary Public

JOY O. DRY NOTARY PUBLIC JOHNSTON COUNTY, N.C.

NO-CHANGE FORM ("Short Form")

to

Statement of Economic Interest

Executive Order Number One

Office Use Only
Code _____
Appt by _____
Date filed: 1/15/04

NORTH CAROLINA BOARD OF ETHICS

For assistance call 919-733-2780 Fax 919-733-2785

e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest *each year* by **May 15**. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO **NOT** HAVE ANY CHANGES TO REPORT, please complete this "No-Change" form. Please return the signed, dated, and notarized page ONLY to the above address.

IF YOU **DO** HAVE CHANGES TO REPORT, please make all necessary changes on the "Long Form." Other than your name and the name of your Board or Agency, YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT.

Please sign, date, and have whichever form you use notarized before returning it to the Board of Ethics at the above address. AGAIN, ALL FORMS MUST BE NOTARIZED.

Name of Person Filing:	Howard N. Lee
Name of Board on which you are serving: or	NC State Bd of Education
Name of State Agency in which you are employed:	NCDPI
E-Mail Address:	hlee@dpi.state.nc.us

VERIFICATION OF *NO MATERIAL CHANGES*

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been **no material changes** to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

1-15-04
Date

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Johnston

Subscribed and sworn before me this the 15th day of January, 2004.

My Commission Expires: 4-4-08

Notary Public

JOHNSTON COUNTY, N.C. NOTARY PUBLIC

120

4/24/03

Dor

Statement of Economic Interest

for Executive Order Number One

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Name of Person Filing: Howard N. Lee
Name of Spouse: Lillian W. Lee
Home Address: 109 Glenview Pl, Chapel Hill 27514
Home Telephone: 919-942-6528

Name of Employer: Retired.
Your Title:
Business Address:
Business Telephone:
Business Fax:
Business Activity:

Spouse's Employer and Business Activity: Retired

If you are filing because you are serving on or being considered for appointment to a State Board, Commission, or Council state the **name of the Board, Commission, or Council.**

NC Board of Public Education

Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? No ✓ If yes, please explain:

NOTE: Executive Order Number One requires you to list assets and liabilities with a value of $10,000 or more for yourself and spouse as set forth below. You are NOT required to include an estimated value of the assets and liabilities.

1. List all parcels of **real estate** located in North Carolina in which you, or your spouse, have an ownership interest valued $10,000 or more. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

109 GlenView Pl; Chapel Hill NC 27514

Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest.

None

If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

None

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

None

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

None

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

Lee Airport Concessions, LLC
LAC Corp (DBA) Dunkin Donuts

Lee Airport Concessions
Dunkin Donuts

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

NONE

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

NO

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

(1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or

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

NONE

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

Anson Awards Inc - Washington, DC.
RBC - Centura Bank -

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

NO

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

None

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

TIAA/CREF -
State Retirement - Spouse
State & NC Retirement system

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

NC Employee Credit Union; RBC Centura Bank; GMAC Corp; BB&T

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

Sources for Person Filing: Anson Awards — former Senator
Social Security
TIAA/CREF

Sources for Spouse: Social Security
NC Retirement System

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

None

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

( ) Admiralty ( ) Taxation ( ) Decedent's estates ( ) Corporation law ( ) Real property

( ) Negligence (representing plaintiffs) ( ) Negligence (representing defendants)

( ) Criminal law ( ) Labor law ( ) Insurance law ( ) Administrative law

( ) Utilities regulation or representation of regulated utilities ( ) Representation of local governments

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

None

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

None

List all **gifts** received with a value exceeding **$100** during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

None

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy.

None

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

None

VERIFICATION

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

4-24-03
Date

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF _____

Subscribed and sworn to before me this the 24th day of April, 2003.

My Commission Expires: 02/08/07

Margaret B Johnson
Signature of Notary Public

DEPARTMENT OF COMMERCE

Jim Fain, Secretary

The Department of Commerce is the State of North Carolina's lead agency for economic, community and workforce development. The Department also has under its auspices the information technology function for state government and for administrative purposes only, agencies that regulate commerce in the State, including the Utilities Commission, Banking Commission, Industrial Commission, Employment Security Commission, and Alcoholic Beverage Control Commission.

Included under the operation of the Department of Commerce are the NC Economic Development Board, the NC Board of Science and Technology and the Commission on Workforce Development. The Department's various divisions including: the Division of Community Assistance; Workforce Development; Business and Industry Development; International Trade; Policy and Research; Marketing; Employment and Training; the Travel and Tourism and the N.C. Film Office. The Department also works with many partners including the State Ports Authority and N.C. Partnerships for Economic Development, which are the 8 regional economic development commissions.

Secretary Fain was appointed by Governor Easley to be Secretary of Commerce on March 27, 2001 where he continues to serve. Prior to become Secretary, Jim Fain served for almost 2 years as the Assistant Secretary for Economic Development in the Department of Commerce. He came to the Department after 25 years with First Union National Bank.

Secretary Fain was asked to speak to the Commerce Committee because the Committee is responsible for much of the legislation affecting the Commerce Department including economic development administration, labor law issues, and workforce preparedness as well as the other regulatory agencies such as banking, utilities, industrial commission and workers compensation, employment security and unemployment compensation, and ABC regulations.

Prepared by O. Walker Reagan
March 15, 2005

North Carolina Department of Commerce

Vision

- A state of well-educated people, trained to do the work of the 21st Century and to think critically – to solve problems and to innovate – to create the new ideas to drive productivity and reduced costs, new product creation and hence new entrepreneurial enterprises---and new jobs.
- A state where wise, consistent investment in infrastructure, the germination of new science and practical technology and the quality of life will sustain our reputation and tradition as the state of innovation.
- A state which differentiates itself in a global economy as the state of knowledge workers – where business succeeds because we have better, more creative workers and because we're the state of new ideas and approaches – always on the cutting edge – a true state of minds
- An exceptional business climate characterized by low business costs, high value services and a peerless quality of life.
- An economy which creates sustainable new jobs -- based on innovation, commercialization of research and a skilled, continuously trained workforce – and which creates new jobs at a pace that will always exceed the loss of jobs no longer competitive in a globally open and dynamic marketplace.

Mission Statement

To improve the economic well-being and quality of life for all North Carolinians.

Key Challenges

- How do we nurture the transformation of our economy from a predominantly labor-intensive manufacturing base to one which features nimble, knowledge-driven enterprises and sustainable jobs in a fiercely competitive global economy?
- How do we promote widely shared prosperity in all parts of our state? How do we create One North Carolina?

Long Term Strategies

- Invest in education and train a globally competitive workforce.
- Develop communities prepared for economic success and well-connected with a comprehensive, contemporary infrastructure.
- Nurture innovation and the commercialization of ideas through investment in science, technology and university outreach –to bring the innovations of the lab and classroom into the marketplace.
- Maintain an exceptional business climate with affordable costs, which attracts new companies to North Carolina, supports the growth and success of existing businesses – large and small – and encourages entrepreneurial startups.

Michael F. Easley, Governor

James T. Fain III, Secretary

North Carolina Department of Commerce

LEGISLATIVE PRIORITIES
2005 General Assembly Session

Department of Commerce

Program and Policy Recommendations

- Replace the William S. Lee Act with a new series of tax credits for new and expanding industry.
  - Create new stand-alone credits for activities such as job creation and investment in machinery and equipment and real property.
  - Credits should be simple, accountable, and provide incentive for rural investment.

- Extend sunset date for the Job Development Investment Grant (JDIG) program to December 31, 2007.

- Provide additional funding as needed to the One NC Fund for continued recruitment of competitive projects.
  - Continue to authorize portion of funds for administration of incentive programs.
  - Governor's budget allocates $5 million for coming fiscal year.

- Establish a workable schedule for corporate income tax relief to North Carolina's businesses through, e.g., appropriate reductions in the tax rate or exemptions from the tax.

- Permit the sunset of the 8.25% upper income tax bracket to increase competitiveness.

- Develop and fund effective programs to provide angel, pre-seed and seed capital for entrepreneurial businesses and to speed technology transfer from universities to N.C. entrepreneurs.
  - Treasurer has recommended use of Escheats Fund as a vehicle for such investments.

- Establish incentives to secure new film productions to North Carolina.
  - Eliminate 1% sales tax on goods used in production.
  - Allow occupancy tax refunds for productions that use hotel rooms for 30 full days (current law allows refunds, but only for 90-day stays)
  - Create grant program to recruit competitive productions to North Carolina. Fund with $4 million recurring appropriation.

Governor's Budget Recommendations

- Secure continued funding to build world class, web-based Economic Development Intelligence System (EDIS)
  - Will help state, regional and local economic teams gather critical data to recruit business, identify clusters, and plan strategically for state and regional economic growth.
  - Supported by broad coalition of interests – universities, regional partnerships, local economic developers, nonprofit economic development agencies.
  - Governor budget recommends 1 position and $297,000 in funding.

- Provide funding to continue Deputy Science Advisor and Policy Analyst position for N.C. Board of Science & Technology.
  - University funding for current position runs out this year.
  - Governor budget recommends 1 position and $60,000 in recurring funds.

- Permit reallocation of $250,000 in unused appropriations from NC Motorsports Testing and Research Complex to Travel & Tourism Division to promote NC motorsports nationally and internationally.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 15, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Dirk Carlton	Murray
Joyce Peters	JP Assoc / Citizen
Catherine Davis	ElectriCities of NC
Lan Wescott	Sprint
Bob Wells	N.C. Telephone Alliance
Laura Wilson	NC State Ports Board
[illegible]	NC State Ports Authority
John Long	Mobile Materials Materials
Sharon Miller	Carolina Utility Customers Association
Debra Dean	BellSouth
Johnny Tillett	Tillett Hobbs Johnson

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 15, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Robert Bennink	NCUC Staff
Lisa Martin	NC Home Builders Assoc.
[illegible]	NCAEC
Nancy Thompson	MCIC
[illegible]	[illegible]
Bob Hilliard	Public Staff - NCUC
[illegible]	Duke Energy
Stan Pace	Verizon
[illegible]	Young, Moore
Charlie Fisher	James Lee Witt Associates
Paul Pulley	Pulley, Watson

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 15, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Marcia Cox	FOOTHILLS Christian Home Educators Lenoir, NC
Susan Valauri	Nationwide
Dan Stewart	IFNC
Evelyn Hawthorne	FHBR
Paul Taylor	Infowar Inc.
Tripp Melton	Sen. Stevens Intern
Kevin Mills	Sen. Purcell's Office
Jessica Sage	NCFPC
Alice Garland	NC DOC
Tony Copeland	NCDOC
Bill Pittman	Pittman Law Firm

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 15, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCRA
Steve Mitchell	Novartis
Annette McCreary	FOOTHILLS Home Educators
Rick McCreary	" " "
Clay McCreary	" " "
Mark McCreary	" " "

Senate Commerce Committee
Tuesday, March 22, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

Commissioner Jim Long, Department of Insurance

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, March 22, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 22, 2005, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Brantly Braswell from Wake County, sponsored by Senator Marc Basnight; Reginald J. Dawson from Cumberland County, sponsored by Senator Tony Rand; and Mark Best from Wake County, sponsored by Senator Neal Hunt.

Senator Soles then introduced Mr. Walker Reagan to present information about the Department of Insurance and about its Commissioner, Jim Long. Senator Soles asked Mr. Long to speak to the committee about the Department and its legislative agenda for 2005. A copy of the 2003-2004 Biennial Report of the Department is attached.

Several members asked questions of Mr. Long. Subjects of interest included flood insurance, medical malpractice, manufactured housing, and fire and rescue company insurance. Senator Nesbitt asked if flood insurance could be opt out as with uninsured or underinsured coverage is for car insurance instead of having to be obtained from a separate source. Mr. Long said agents are taught in continuing education to clearly explain the flood insurance option. Senator Apodaca asked if flood insurance is priced based on where one's property lies in relation to a flood plain. Mr. Long said flood insurance is a federal program; he does not regulate it in North Carolina but he believes it is. Mr. Long said the medical malpractice situation needs legislative remedy; it is a real problem. The Department of Insurance does not set rates for medical malpractice insurance. They can require a hearing, but the burden of proof is on the side of the Department, not the medical malpractice insurance company. Senator Kerr asked if the guaranty funds are sufficient. Mr. Long replied that with the possible exception of worker's compensation they are sufficient. Senator Kerr commented that moving to paid from volunteer rescue workers for rescue service by local governments will is occurring and is very expensive. Senator Nesbitt asked for some information about spreading the medical malpractice risk among all doctors so that some specialties did not have to pay so much more than others. Mr. Long replied that the likelihood of having to pay large claims of some specialties is much less than other specialties. Mr. Long added they would get the information to him.

The meeting adjourned at 11:45 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

DEPARTMENT OF INSURANCE

Jim Long, Commissioner

The Department of Insurance was created in 1899 and began regulating insurance in the State that year. Prior to 1899, the Secretary of State's office regulated insurance in N.C. Today, the Department is the State's lead agency for regulation of all aspects of the insurance industry and provides consumer protection and education services, and safety awareness training for the State's citizens.

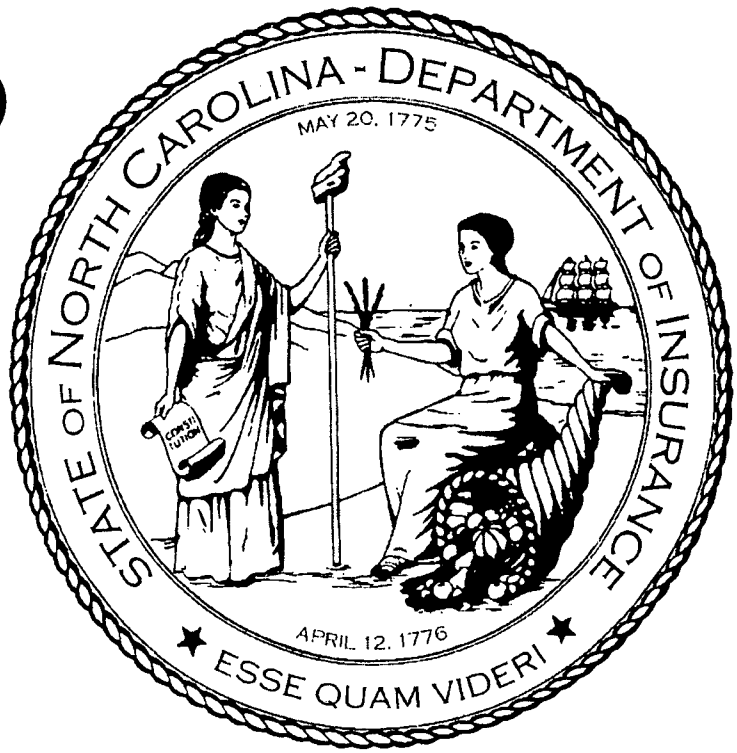
The Department is comprised of three groups. The Company Services Group assists in the review of company and rate bureau filings and rate related issues. In addition, this group performs financial analyses of insurance companies and conducts financial examinations and audits of all domestic insurers.

The Technical Services Group reviews rate, rule and policy form filings for property and casualty coverage and life and health insurance coverage. This group also monitors and regulates managed care entities in the State and assists seniors with Medicare regulations, Medicare supplement insurance, and long term care insurance.

The Public Services Group assists consumers with insurance questions. The Public Services Group is also responsible for regulation of insurance agents, brokers, bail bondsmen and others, and conducts criminal investigations of insurance related crimes.

In addition to insurance regulation, the Commissioner of Insurance also serves as the State Fire Marshall. The Office of the State Fire Marshall administers engineering and building codes in the State, oversees standards for manufactured homes, administers funds for self-insurance of state-owned property, and provides fire and rescue training for local fire department and rescue squads.

Commissioner Long was first elected to the post of Insurance Commissioner in 1984.He is a former president and vice-president of the National Association of Insurance Commissioners. Prior to being elected as Commissioner of Insurance, Commissioner Long also represented Alamance County in the House of Representatives and served as legal counsel to the Speaker of the House.



North Carolina Department of Insurance

2003-2004 Biennial Report

Jim Long
Insurance Commissioner

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Department of Insurance Mission Statement

The North Carolina Department of Insurance serves the citizens of North Carolina through consumer protection and education, safety training and promotion and regulation of specified activities and industries.

This is accomplished by:

- Assuring an optimum marketplace in which consumers can readily purchase fairly-priced insurance products from sound, responsive entities;
- Educating the public in loss prevention, safety awareness and developing life safety standards;
- Maintaining a well-managed, fiscally-responsible organization staffed by knowledgeable, courteous, professional employees.

At all times, the affairs of the department are conducted in an open, ethical manner and in the best interests of the public.



Jim Long,
Commissioner of Insurance

Company Services Group

The Company Services Group is comprised of the Actuarial Services, Financial Analysis and Financial Evaluation Divisions as well as the Department's Receivership Office.

The Actuarial Services Division assists in the review of company and bureau rate filings and rate related issues. The division also conducts actuarial studies and special projects to support financial analysis and examination work as well as other areas of the Department.

The Financial Analysis Division performs financial statement analysis of North Carolina licensed insurance entities to ensure compliance with solvency and other requirements. Close monitoring of troubled insurance entities is also the responsibility of the Division including supervisions and work-outs in an attempt to restore prudent solvency measures.

The Financial Evaluation Division conducts financial examinations or audits of all North Carolina domestic insurers to ensure compliance with solvency and other similar standards. The Division also reviews applications for the initial licensure of insurance companies in North Carolina and also regulates risk retention groups, risk purchasing groups, continuing care retirement communities, professional employer organizations and individual employers licensed to self-insure for workers' compensation.

The Receivership Office, in conjunction with the Financial Analysis Division, administers the estates of all insurance entities placed into rehabilitation or liquidation in North Carolina.

Actuarial Services Division

Actuarial Services assists other Department of Insurance divisions in regard to all aspects of actuarial science. Divisions that receive actuarial assistance include the:

- Consumer Services Division with consumer complaints on rate increases and with general questions concerning insurance;
- Property and Casualty Division in reviewing rate filings, loss cost filings, form filings and statistical filings;
- Rate counsel when preparing for and conducting rate hearings. The Division also provides actuarial assistance in the preparation of briefs during the appeals process up to and including the North Carolina Supreme Court.
- Financial Analysis Division with reviewing Actuarial Opinions and Memorandums, reviewing of HMO claim reserves and various ad hoc projects;
- Financial Examination Section with various claim reserve and proper accounting of reserve items;

- Managed Care Division in regard to the licensing of new Health Maintenance Organizations (HMOs) and the review of expansion and material modification requests, and the annual licensing of Multiple Employer Welfare Arrangements (MEWAs);

- Life and Health Division with reviewing individual accident and health insurance and HMO rate revisions, review of unusual life, annuity and health insurance products, and review of actuarial aspects of proposed rules and legislation pertaining to life and health insurance.

Other government agencies that have received actuarial assistance include the:

- General Assembly's Research Division with cost estimates on proposed health and life insurance legislation and various ad hoc projects relating to actuarial science.

Life and Health Section

This Division's review of individual accident and health rate change requests saved consumers covered under such policies $20.3 million in 2003, and $22.1 million in 2004. Since the Division's review of rates began, consumers have realized savings of approximately $133.0 million as of December 2004.

During the biennium, Actuarial Services collected data and evaluated the impact of mandated reductions in the credit life and accident and health insurance prima facie rates. The combined savings to consumers purchasing credit insurance is approximately $44.8 million in 2003, and $42.6 million in 2004. Since 1988, the first year of an evaluation of a prima facie rate reduction, consumers have realized savings of approximately $646.6 million as of December 2004.

Actuarial Services annually reviews the Medicare supplement insurance refund calculations submitted by insurance carriers. These forms were reviewed for calendar year 2003 and all carriers were correctly performing the calculations. A refund of $844,597 was paid in September 2004 by Peoples Benefit Life Insurance Company for calendar year 2003. The Division continues to review all Small Employer Group actuarial rate certifications to assure compliance with the Small Employer Group Health Coverage Reform Act.

Actuarial Services also assists in the review of licensing Multiple Employee Welfare Arrangements (MEWAs) and the review of their specific and aggregate maximum net retention level. During the biennium, Actuarial Services' review of renewal licensing applications resulted in some MEWAs either increasing their surplus to accommodate their specific maximum net retention levels or lowering their specific maximum net retention level.

Actuarial Services acts as the life and health risk assessment division for the Department and works closely with the Department's Financial Evaluation and Financial Analysis Divisions concerning claim reserve and premium rate analyses and solvency issues for HMOs and MEWAs.

Property and Casualty Section

Actuarial Services Division works closely with the Property and Casualty Division and the Financial Analysis and Evaluation Divisions in reviewing rate filings, loss cost filings, form filings and statistical filings. Actuarial Services Division has been heavily involved in private passenger automobile rate filings, workers compensation filings and self-insured compensation funds. The Division assists Department counsel to prepare and present the Department's case in the public rate hearings. The Division strives to ensure that rates are not excessive to policyholders, yet adequate so as to provide a reasonable profit to companies and to protect their solvency.

Private Passenger Auto

In 2003, the North Carolina Rate Bureau (NCRB) filed for a 10 percent rate decrease in private passenger automobile rates. After DOI review, a settlement was reached and the NCRB implemented a 15 percent rate decrease, potentially saving the public as much as $255 million dollars.

In 2004, the NCRB filed for a 12.2 percent rate increase for private passenger automobile rates. After DOI review, the Commissioner called for a public hearing on the matter. Subsequently, a settlement was reached and no rate change was implemented by the NCRB, potentially saving the public as much as $390 million dollars.

Workers' Compensation

In 2003, the North Carolina Rate Bureau (NCRB) filed for an 8.2 percent increase for workers' compensation loss costs and a 19.5 percent increase for assigned risk rates. After DOI review, a settlement was reached and the NCRB implemented a 1 percent decrease on loss costs and a 5 percent increase on assigned risk rates, potentially saving North Carolina companies as much as $92 million dollars.

In 2004, the NCRB filed for an 8.7 percent increase for both workers' compensation loss costs and assigned risk rates. After DOI review, a settlement was reached and the NCRB implemented a 2 percent rate increase on loss costs and 4 percent for assigned risk rates, potentially saving North Carolina companies as much as $69 million dollars.

The Division reviews the rates for the self-insured workers compensation funds domiciled in North Carolina and assists the Financial Evaluation and Analysis Divisions in the financial review and examination of these funds.

Homeowners

No homeowners rate change was filed by the NCRB during this period.

Dwelling Fire and Extended Coverage

In 2003, the North Carolina Rate Bureau filed for a 42.8 percent increase to Dwelling Fire and EC rates. After review by the DOI, a settlement was reached and the NCRB implemented a 13.6 percent rate increase, potentially saving the public as much as $35 million dollars a year.

In addition to these activities, the Division has reviewed over 700 individual company rate filings for various lines of insurance during this period.

Financial Analysis Division

The primary responsibilities of the Division are to monitor the financial condition and solvency of licensed or authorized insurance companies, review and approve certain insurance company transactions requiring the Commissioner's approval, work closely with troubled companies, and handle the financial and regulatory functions associated with companies in receivership.

Monitoring of insurance companies is accomplished by analyzing annual and interim financial statements and other financial data for each company using financial analysis programs and systems. Compliance with a wide variety of statutory requirements is also determined and a conclusion is reached on the financial health of each insurance company. The financial analysis process utilizes the database and programs of the National Association of Insurance Commissioners and systems which have been developed in-house.

The Division closely monitors the financial condition and operations of domestic insurance entities deemed to be in a potentially hazardous financial condition. The ultimate goal of the Division is to determine whether a troubled insurance entity can be prevented from going into formal delinquency proceedings and returned to sound financial condition and good business practices. Examples of close monitoring procedures performed by this Division include:

- financial analyses of annual and interim financial statements and other financial data, including holding company and affiliated company data;
- initiating, monitoring and enforcing workout plans designed to correct deficiencies causing the hazardous financial condition;
- targeted financial and operational examinations;
- formal administrative supervision proceedings designed to protect insurance company assets through a workout period.

Staff of the Division also comprise the Receivership Office (see below) working on supervision, rehabilitation and liquidation of domestic insurance companies. This responsibility includes evaluating the necessity of instituting formal delinquency proceedings and providing guidance to troubled insurers after leaving administrative supervision.

The Division also processes insurance organization corporate changes (such as acquisitions, mergers, dissolutions, charter changes, bylaw changes and Holding Company Act filings) and administers the insurance company security deposit program. These deposits are required by law for the protection of policyholders. The securities are maintained by Wachovia Bank, N.A. under a safekeeping agreement and totaled over $890 million at year end 2003 and 2004. These year end balances are significantly higher than in previous years as a result of a legislative change effective Oct. 1, 2003, which increased the amount of the minimum required deposit for all licensed foreign insurance companies. Most of the functions of the collateral securities program are computerized, allowing rapid processing of transactions and better monitoring of the quality of securities on deposit.

Performance Indicators

Calendar Year	2003	2004
Insurance organizations regulated	1,563	1,550
Financial statements analyzed	6,141	6,089
Audited financial statements reviewed	508	498
Insurer licenses suspended	2	0
Insurer licenses revoked	1	2
Administrative actions	20	22
Securities on deposit for policyholder protection	$892,000,000	$898,000,000

Financial Evaluation Division

The Financial Evaluation Division is comprised of the Company Admissions Section, the Financial Examination Section and the Special Entities Section. In addition to being responsible for examinations and the admission of entities seeking to do business in this State, the Division regulates individuals that self-insure for workers' compensation, certain third party administrators, professional employer organizations and continuing care retirement communities for compliance with the solvency laws of this state. The ultimate objective of this regulation is to reduce the likelihood of any of these entities failing or to mitigate the effect of any of these entities' insolvency on the consumers of this State.

Company Admissions Section

The primary responsibility of this section is the evaluation of the financial condition of insurance companies applying for initial licensing, or other type of authority to transact insurance business in North Carolina.

It is important that insurance entities meeting or exceeding the minimum requirements be licensed or authorized so that adequate and competitive markets are available to North

Carolina insurance consumers. It is equally important that any entity not meeting the minimum requirements be denied a license or authority in order to protect North Carolina insurance consumers from potential insurer insolvencies.

During the biennium, insurance companies continued to demonstrate considerable interest in establishing business in North Carolina. During the last two years, 88 new applications were received. A total of 45 insurance entities were found to satisfy North Carolina admission requirements and received initial certificates of authority during the biennium. This number includes the formation of two North Carolina domestic insurance companies.

The section is also responsible for the initial review of insurance companies applying for eligibility for the placement of surplus lines business. The surplus lines market is for insurance products that are not readily available to consumers through licensed companies. During the biennium, the section received and reviewed eight filings for surplus lines eligibility. Eight new companies were found to qualify.

Additionally, the section is responsible for reviewing applications for accredited reinsurer status in North Carolina. During the biennium, seven filings were received and seven companies were found to satisfy the statutory requirements.

The section is responsible for the financial review of risk retention groups filing for initial registration. It is also responsible for making the initial determination that purchasing groups satisfy the requirements for registration. These entities operate under the authority of the Federal Risk Retention Act and North Carolina Insurance Statutes governing liability risk retention. The federal act permits risk retention groups and purchasing groups to provide certain types of liability insurance coverage to their members if the group is properly licensed in at least one state and files certain minimal financial information with each state in which it desires to do business. We have required as much information as allowed under the federal act in order to evaluate the merits of risk retention group filings. North Carolina statutes require a purchasing group to buy its coverage from an insurance company that is either licensed or eligible for surplus lines business in this state. During the biennium, 14 filings for initial registration were received from risk retention groups and 31 initial filings were received from purchasing groups. Fourteen risk retention groups and 31 purchasing groups received initial registration during the period.

Financial Examination Section

The section conducts varying types of audits ranging from full examinations to examinations of very specific issues. The latter usually involves the resolution of issues that can not be resolved during the financial analysis process. Practices and procedures have been developed by this Section, the Financial Evaluation Division and the National Association of Insurance Commissioners (NAIC).

Application software sub-licensed from the NAIC is used to perform examination procedures. Also, the NAIC has endorsed audit software that has assisted in automating the entire exam process. North Carolina is one of 40 states currently using this software.

Automation is of great importance; however, technological advances and the development of more sophisticated software require the section's commitment to maintain hardware and software current.

Communication with the office and the NAIC is an important part of the examination process. Examiners have electronic access to both the office and to the financial information of insurance entities through the NAIC. The ability to communicate effectively while on-site is critical to conducting an efficient and effective examination.

Special Entities Section

The Special Entities Section has responsibility for the licensing and regulation of continuing care retirement communities, professional employer organizations and individual employers who self-insure for workers' compensation.

Continuing Care Retirement Communities

Continuing Care Retirement Communities (CCRCs) are entities that provide lodging or independent living together with nursing services, medical services or other health-related services under a contract effective for the life of the individual or for a period longer than one year. The section provides financial oversight and licenses these entities. Additional safeguards for facility residents and prospective residents are provided through the oversight of disclosure statements.

There are 54 licensed CCRCs in North Carolina and four under development. Currently, there are over 15,000 senior adults residing in North Carolina CCRCs.

On an annual basis, the section reviews the disclosure statement, contract and audited financial statements for each licensed CCRC. The section also works with providers/sponsors who are currently developing, or are interested in developing, new CCRCs in North Carolina for compliance with all applicable statutes and rules.

Professional Employer Organizations

Professional employer organizations (PEOs) are entities that offer and provide professional employer services. Professional employer services is an arrangement by which employees of a PEO are assigned to work at a client company and in which employment responsibilities are in fact shared by the PEO and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the workforce at a client company work site or a majority of the personnel of a specialized group within that workforce consists of assigned employees of the PEO.

Effective Jan. 1, 2005, all persons engaged in professional employer services in North Carolina must become licensed by the North Carolina Department of Insurance. Prior to this requirement, all persons engaged in professional employer services in North Carolina had to be registered by the North Carolina Department of Insurance. As of Dec. 31, 2004, there were 140 PEOs registered in North Carolina (97 non-group PEOs and 10 PEO groups comprised of 43 PEOs). There are currently no PEOs licensed in North Carolina.

The section is responsible for the licensing of all PEOs and for the continued monitoring of the financial condition of the PEO through the annual review of audited financial statements. On an ongoing basis the section monitors changes in controlling persons, changes in client company relationships and changes in workers' compensation and benefit plans offered by the PEO.

Individuals Self-Insured for Workers' Compensation

There are 159 active individual employers who are self-insuring for workers' compensation in North Carolina under Article 5 of the Workers' Compensation Act ("Act").

On an annual basis the section reviews the audited financial statements and actuarial opinion of all individual employers who are self-insured for workers' compensation in North Carolina. The section ascertains that all deposits required under the Act are maintained in accordance with statutory guidelines in order to protect the interests of all employees of self-insured employers and the North Carolina Guaranty Association. The section also works with entities that may be interested in becoming licensed to self-insure for workers' compensation under Article 4 of the Act.

The section is also responsible for reviewing the financial statements for Third Party Administrators, Risk Retention Groups and Multiple Employer Welfare Arrangements.

Receivership Office

The Receivership Office's ultimate goal is to rehabilitate and/or liquidate troubled and insolvent insurers in order to protect and preserve, to the maximum extent possible, the remaining assets of the insurer for the benefit of the company's policyholders, creditors and the public. The Office is comprised of members of the Financial Analysis Division who handle the financial and regulatory aspects and other state employees that handle IT and other operational aspects of companies in supervision, rehabilitation and liquidation. Examples of specific duties performed include:

- marshaling assets, pursuing asset recoveries and liquidating assets of companies in receivership to the maximum benefit of policyholders and other creditors;
- managing the operations of the various departments of the insurance company through a runoff period including claims, underwriting, policyholder service, data processing, accounting and personnel;
- coordinating relationships and issues involving the various state guaranty associations called upon to pay policyholder claims;
- providing litigation support services and coordinating relationships and issues involving federal and state investigative agencies outside of the Department of Insurance.

During the 2003-2004 biennium, the Receivership Office was involved with 12 receiverships. Three receiverships were initiated during this period and three others were closed, with nine remaining open at Dec. 31, 2004.

Technical Services Group

The Technical Services Group is comprised of the Property and Casualty Division, Market Examinations Division, Life and Health Division, Seniors' Health Insurance Information Program, Managed Care and Health Benefits Division, and the Healthcare Review Program. The work performed by divisions in this group work with centers on policy issues, taking into consideration how they are implemented in insurance products and day-to-day company operations.

The Property and Casualty Division's primary responsibility is the review of rate, rule and policy form filings relating to property and casualty coverages. These filings are made by insurance companies, statutory bureaus and licensed rating organizations.

The Life and Health Division is responsible for the review and approval of rate, rule and policy form filings submitted by life and health insurance companies and issuance of licenses for third party administrators.

The Market Examinations Division conducts field examinations of the market practices of domestic and foreign insurers and their representatives.

The Seniors' Health Insurance Information Program's (SHIIP) primary function is to train adult volunteers to help older adults through the maze of Medicare regulations, Medicare supplement insurance, long-term care insurance and claims procedures. In recent years, Medicare's move toward managed care options has led SHIIP to develop new training courses. Recently, there has been an increased interest in long-term care, and the need for information on this product has grown. SHIIP's ability to increase its activities and effectiveness depends on collaboration with numerous state, county and federal agencies, as well as with community organizations.

The Managed Care and Health Benefits Division (MCHB) monitors and regulates the activities of managed care entities such as health maintenance organizations (HMOs) and managed care indemnity health insurers, including their arrangements with Preferred Provider Organizations (PPOs) and Multiple Employer Welfare Arrangements (MEWAs). The Division's emphasis is on how company activities affect consumers in North Carolina. The MCHB Division accomplishes its work through several types of activities: market practice examinations of companies, review of document filings required of companies and data collection, analysis and reporting.

The Healthcare Review Program (HCR Program) offers external review services, which consist of the independent medical review of a health plan denial and offers another option for resolving coverage disputes between a covered person and their insurer.

Property and Casualty Division

This Division licenses rating organizations, advisory organizations and joint underwriting associations, along with reviewing rate, rule and policy form filings made by these entities. In addition, this Division reviews the rates, rules and forms for the North Carolina Rate

Bureau, North Carolina Reinsurance Facility, Beach Plan, Fair Plan and licensed property and casualty insurance companies.

State law permits insurance companies that are unlicensed to write insurance on risks in this state as "surplus lines" companies provided there is compliance with applicable statutes and rules. Surplus lines taxes are the responsibility of specially licensed agents. This Division receives and reviews the tax forms submitted by these agents.

Surplus Lines Review

The following chart reflects surplus lines activity for the years 2003 and 2004 with tax reported at 5.0 percent of gross premiums charged.

	No. of Policies	Premium	Tax generated
2003	54,382	$480,568,427	$24,027,593
2004 *	68,498	$514,527,642	$20,329,826

*** Total tax for 2004 not available until mid-February 2005**

Filings Review

Because this Division's primary responsibility is the review of forms, rules and rates, filings must be carefully analyzed. During 2003-2004, a total of 22,141 filings were reviewed.

Forms, Rules and Rates Reviewed

	Companies and Organizations
2003	11,332
2004	10,809
Total	**22,141**

Rate Deviations

Under the jurisdiction of the North Carolina Rate Bureau, state law allows companies to file rate deviations (discounts) on coverages such as private passenger automobile, homeowners, mobile homeowners and dwelling fire. A typical deviation would be lower auto insurance premiums for autos with anti-locking brakes.

	Homeowners	Dwelling Fire	Auto
2003	48	9	98
2004	78	6	70

Workers Compensation

A significant number of large deductible plans and scheduled rating plans have been approved for individual companies as the market continues to remain stable and competitive. This may be attributed to the introduction of loss costs in ratemaking, use of managed care plans, implementation of drug-free workplace plans and increased use of loss control programs. For example, the number of companies filing a drug-free premium credit has increased. Credits start at 5 percent. It applies to North Carolina employers who establish a drug-free workplace, supported by drug testing.

	NC Rate Bureau	Residual Market	Individual Company
2003	1	1	144
2004	1	1	119

Workers Compensation Rates 1985-2004

Filing Year	Rate Requested	Rate Implemented	Statewide Premium	Est. Employer Savings
1985	12.90%	7.50%	$ 228,937,000	$ 12,362,598
1986	12.80%	5.80%	$ 344,346,000	$ 24,104,220
1987	16.80%	15.90%	$ 391,308,000	$ 3,521,772
1988	(No Filing)	(No Filing)	$ 453,879,000	-
1989	16.80%	9.00%	$ 504,204,000	$ 39,327,912
1990	29.30%	18.90%	$ 557,950,000	$ 58,026,800
1991	41.80%	15.80%	$ 635,173,000	$ 165,144,980
1992	40.30%	33.00%	$ 635,200,000	$ 46,369,600
1993	15.5	9.30%	$ 633,461,000	$ 39,274,582
1994	(No Filing)	(No Filing)	$ 633,181,437	-
1995	-15.00%	-15.00%	$ 587,024,256	-
1996	-14.00%	-14.00%	$ 591,203,889	-
1997	-13.70%	-13.70%	$ 658,153,267	-
1998	-1.10%	-1.10%	$ 675,624,668	-
1999	3.40%	0.00%	$ 719,538,435	$ 24,464,307
2000	4.60%	4.60%	$ 719,538,435	-
2001	-1.40%	-1.40%	$ 766,822,301	-
2002	0.00%	0.00%	$ 836,258,595	$ 2,090,646
2003	9.10%	-0.05%	$ 959,561,074	$ 92,147,074
2004	8.70%	2.20%	$ 1,057,539,270	$ 68,740,053
			Total	$ 575,574,544

Private Passenger Auto Rates

Article 36 of Chapter 58 requires the North Carolina Rate Bureau to make a rate filing for private passenger automobile annually on Feb. 1. Below is a history of the rate filings:

Private Passenger Auto Rates 1984-2004

Rate Effective Date	Rate Requested	Rate Ordered	Rate Implemented	Consumer Savings
March 1, 1985	4.1%	0.0%	0.0%	$19,621,579
January 1, 1986	20.8%	10.4%	10.4%	$107,041,089
July 15, 1987	12.2%	1.0%	1.0%	$70,084,004
April 1, 1988	4.1%	0.7%	0.7%	$27,519,059
January 1, 1989	6.4%	4.3%	4.3%	$27,784,097
March 1, 1990	4.2%	-5.9%	3.4%	$127,768,279
March 1, 1991	9.6%	4.1%	4.1%	$97,121,492
June 1, 1992	9.4%	4.4%	4.4%	$55,623,900
February 1, 1993	-4.2%	-6.0%	-6.0%	$28,537,120
February 1, 1994	(No Filing)	-6.0%	-6.0%	$26,113,419
January 1, 1995	17.7%	-8.5%	4.4%	$486,800,438
January 1, 1996	13.8%	-8.5%	4.4%	$378,559,212
December 1, 1996	6.1%	5.5%	5.5%	$3,907,391
November 1, 1997	5.5%	0.0%	0.0%	$140,349,969
November 1, 1998	7.2%	0.0%	0.0%	$195,001,681
November 1, 1999	(No Filing)	0.0%	0.0%	$162,946,610
September 1, 2000	-5.0%	-9.3%	-9.3%	$124,369,047
September 1, 2000	-5.0%	-9.3%	-9.3%	$72,236,268
April 1, 2002	10.6%	-13.0%	5.0%	$573,392,774
January 23, 2003	5.9%	-11.6%	5.9%	$244,512,988
July 1, 2003	-10.0%	-15.0%	-15.0%	$254,622,206
January 1, 2005	12.2%	0.0%	0.0%	$389,699,486
			Total	$3,613,612,108

North Carolina Insurance Underwriting Association and North Carolina Joint Underwriting Association

The following charts are reflective of premium writings and policies issued by the North Carolina Insurance Underwriting Association (Beach Plan) and the North Carolina Joint Underwriters Association (Fair Plan) for its last four fiscal years (10/1/00-9/30/04). Premium growth has currently pushed premium writings in the Beach Plan to almost $100 million dollars and premium writings in the Fair Plan to over $23 million dollars.

NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION (BEACH PLAN)				
BEACH POLICIES ONLY				
YEAR	PREMIUMS	% OF CHANGE	POLICIES ISSUED	% OF CHANGE
10/01/00 - 09/30/01	25,895,253	N/A	27,156	N/A
10/01/01 - 09/30/02	27,413,490	6.0%	28,444	5%
10/01/02 - 09/30/03	30,303,491	11.0%	30,838	8%
10/01/03 - 09/30/04	37,717,107	24.0%	31,761	3%

DWELLING AND COMMERCIAL WIND AND HAIL POLICIES ONLY (BEACH AREA)				
YEAR	PREMIUMS	% OF CHANGE	POLICIES ISSUED	% OF CHANGE
10/01/00 - 09/30/01	18,836,985	N/A	14,338	N/A
10/01/01 - 09/30/02	23,000,641	22%	15,550	8%
10/01/02 - 09/30/03	27,699,721	20%	27,472	77%
10/01/03 - 09/30/04	12,697,796	-54%	2,693	-90%

DWELLING AND COMMERCIAL WIND AND HAIL POLICIES ONLY (COASTAL AREA)				
YEAR	PREMIUMS	% OF CHANGE	POLICIES ISSUED	% OF CHANGE
10/01/00 - 09/30/01	7,983,602	N/A	11,346	N/A
10/01/01 - 09/30/02	10,903,841	37%	14,090	24%
10/01/02 - 09/30/03	16,817,787	54%	20,159	43%
10/01/03 - 09/30/04	7,695,717	-54%	3,763	-81%

HOMEOWNERS WIND AND HAIL POLICIES ONLY (BEACH AREA)				
YEAR	PREMIUMS	% OF CHANGE	POLICIES ISSUED	% OF CHANGE
10/01/00 - 09/30/01	0	N/A	0	N/A
10/01/01 - 09/30/02	0	N/A	0	N/A
10/01/02 - 09/30/03	0	N/A	0	N/A
10/01/03 - 09/30/04	22,690,418	N/A	30,300	N/A

HOMEOWNERS WIND AND HAIL POLICIES ONLY (COASTAL AREA)				
YEAR	PREMIUMS	% OF CHANGE	POLICIES ISSUED	% OF CHANGE
10/01/00 - 09/30/01	0	N/A	0	N/A
10/01/01 - 09/30/02	0	N/A	0	N/A
10/01/02 - 09/30/03	0	N/A	0	N/A
10/01/03 - 09/30/04	14,408,421	N/A	41,473	N/A

HOMEOWNERS POLICIES ONLY (BEACH AREA)				
YEAR	PREMIUMS	% OF CHANGE	POLICIES ISSUED	% OF CHANGE
10/01/00 - 09/30/01	0	N/A	0	N/A
10/01/01 - 09/30/02	0	N/A	0	N/A
10/01/02 - 09/30/03	178,245	N/A	114	N/A
10/01/03 - 09/30/04	1,623,801	811%	1,020	795%

HOMEOWNERS POLICIES ONLY (COASTAL AREA)				
YEAR	PREMIUMS	% OF CHANGE	POLICIES ISSUED	% OF CHANGE
10/01/00 - 09/30/01	0	N/A	0	N/A
10/01/01 - 09/30/02	0	N/A	0	N/A
10/01/02 - 09/30/03	340,605	N/A	392	N/A
10/01/03 - 09/30/04	2,550,532	649%	3,648	831%

TOTAL BEACH PLAN				
YEAR	PREMIUMS	% OF CHANGE	POLICIES ISSUED	% OF CHANGE
10/01/00 - 09/30/01	52,715,840	N/A	52,840	N/A
10/01/01 - 09/30/02	61,317,972	16%	58,084	10%
10/01/02 - 09/30/03	75,339,849	23%	78,975	36%
10/01/03 - 09/30/04	99,383,792	32%	114,658	45%

Other Significant Issues this Biennium

FACTS ABOUT INSURANCE FOR LOSSES DUE TO TERRORISM

Background

- Prior to Sept. 11, 2001, most property and liability insurance policies did not address the issue of terrorism. Many policies did provide exclusions for war, civil war, warlike action by a military force, insurrection, rebellion, revolution and usurped power. But nothing about terrorism thus the possibility of coverage.
- Immediately following the terrorists' attacks of Sept. 11, most insurance companies filed exclusions to limit their liability from a terrorist event. Some of these exclusions were very definitive as to what constituted terrorism and others were quite broad.
- Because most insurance companies were not willing to insure commercial properties for terrorist events, a movement began to provide some type of federal insurance or reinsurance to provide the coverage. There were concerns that financial institutions would not provide loans to large projects without protection against the possibility of a terrorist event. The lack of coverage could impact our economic growth.
- On Nov. 26, 2002, President Bush signed the Terrorism Risk Insurance Act of 2002 (TRIA). The act provided a federal backstop for certain acts of terrorism through a temporary federal program. Insurance companies will share the terrorism exposure with the federal government. The Secretary of the Treasury in conjunction with the Secretary of State and the Attorney General will certify whether a specific event was an act of terrorism covered under this Act. The act nullified then in-force terrorism exclusions approved by the various states. Companies now must insure against "certified" terrorist events and may offer optional coverage for "non-certified" acts of terrorism.

Coverage and Allowed Exclusions

- In the event of an act of terrorism, the Secretary of Treasury would have to determine if that event met the requirements of TRIA. If so, then the insurance industry and the federal government would share in the losses and individual commercial properties would be protected. The policyholder would receive compensation from the insurance company who would be reimbursed by the federal government.
- In the event of an act of terrorism that was not certified as covered under the federal law, then there would be no absolute coverage. Coverage would hinge upon the insurance contract that might (or might not) exclude terrorism. Property owners would have to rely upon their own policies that may not provide any coverage.
- The TRIA was for commercial property only. In North Carolina, personal lines policies such as homeowners do not have terrorism exclusions. That means if your residence was damaged or destroyed as the result of a terrorist act, your insurance company could not rely upon the fact that it was a terrorist act to deny coverage.
- Workers compensation in most states does not exclude war or terrorism. Workers compensation has the potential to create a catastrophic loss in the event of a terrorist act. Workers compensation is included in the TRIA, so losses may not be excluded.

Conditional Terrorism Exclusions

- TRIA is scheduled to expire Dec. 31, 2005. Because of the pending expiration of TRIA, there has been uncertainty in the market place for commercial lines property and casualty insurance coverage. Due to the possibility that there will be no Federal backstop after Dec. 31, 2005, insurers have had to make decisions in reference to terrorism coverage on policies with effective dates on or after Jan. 1, 2005. As a result, the Property and Casualty Division received and reviewed a significant number of Conditional Terrorism Exclusion filings in the fourth quarter of 2004.

Homeowners 2000 Policy Program (HO-2000)

The Commissioner of Insurance approved the HO-2000 program to be effective April 1, 2005. This program was submitted by the North Carolina Rate Bureau on behalf of all member companies and replaces the Homeowners 1991 Policy Program (HO-1991). The HO-2000 program is a comprehensive revision to the policy forms and endorsements of the homeowners policy program in North Carolina. The broadening of coverage to the policy forms offset the minor reductions in coverage and did not result in a rate level change.

Medical Malpractice in North Carolina

The Property and Casualty Division reviews the filings for premiums and policy forms submitted by medical malpractice insurers. The Division works closely with the Actuarial Division which will continue to prepare a comparison of premiums by doctor class, for over 100 classes (from family practice to OB/GYNs) for the leading insurers. This comparison will provide useful information on premium levels. Comparing the current charts to previous charts makes it possible to compare premiums over time. The comparisons will be updated several times a year. The most recent data for the largest writers is for the calendar year 2003. The five largest licensed writers in North Carolina are:

Company	Total Premium (Included Hospitals, Other Facilities, Other Providers, and Physicians)	
Medical Mutual Insurance Company of North Carolina	$	70,232,816
MAG Mutual Insurance Company	$	44,696,930
Medical Protective Company	$	28,856,901
Doctors Company, an Interinsurance Exchange	$	8,729,798
Truck Insurance Exchange	$	4,942,950

Data for 2004 is not complete.

Life and Health Division

The 2003-2004 biennium has been a period of steady activity for this Division.

Health Insurance Issues

The Life and Health Division oversaw health insurers' implementation of the Patient Bill of Rights legislation, since numerous new and revised laws required insurers in major medical market to submit revised forms for approval.

The trend of insurers exiting the individual major medical health insurance market noted in the 2001/2002 Biennial Report appears to have leveled. For 2003/2004, only three insurers have exited the individual market place. It is too early to say if the individual health insurance market is stabilizing, but the current trend is far more favorable than in the previous period.

In 2004, the Division noted a significant rise in the number of insurers withdrawing specific long-term care products from its North Carolina market. The Division will continue to monitor these closed blocks of business for rating spirals.

Recent changes in federal tax laws provided for the creation of Health Saving Accounts (HSAs) to help individuals save for qualified medical and retiree health expenses on a tax-free basis. Any individual who is covered by a high-deductible health plan may establish an HSA. Amounts contributed to an HSA belong to individuals and are completely portable. Every year the money not spent stays in the account and gains interest tax-free, just like an IRA. There appears to be a growing interest in these plans by consumers and insurers. At the end of 2004, 21 insurers were marketing high deductible health plans in North Carolina for the expressed use with HSAs.

Life Insurance Issues

New life insurance products continued to be developed during this biennium as this product is increasingly being sold as an investment, rather than strictly as a method of protecting beneficiaries. Life insurance companies are developing policies, which can compete with other investment vehicles, including annuities. The increasing entry of banks into the sale of insurance is fundamentally changing the way in which states and the federal government regulate insurance and banking.

Significant changes have been made to the free look periods and replacement requirements for individual products allowing consumers a longer period of time to review their purchase of life insurance and annuity products.

The Division implemented the Viatical Settlements Act which requires licensure of companies who purchase life insurance policies from individuals selling their life insurance. The adoption of the Viatical Settlement Act extended the Division's authority to include companies who purchase life insurance from any individual, not just those who are chronically or terminally ill as was true in the initial adoption of regulation of viatical

settlements. This extension of authority has resulted in many more companies being licensed to operate in North Carolina.

Form and Rate Filings

Nationally, insurers are calling for state insurance departments to speed up the review process for rates and policy forms, as well as achieve a higher level of uniformity from state to state. These requests are valid with respect to the insurer's need to be able to compete in a national market and in an industry that has changed because of Congress' financial modernization efforts.

The Division has worked steadily to speed up its review process during the 2003-2004 biennium and has activity participated in developing Uniformed Model Compact Standards by the National Association of Insurance Commissioners (NAIC). The Division adopted the NAIC Product Coding Metrics, developed and implemented North Carolina Specific Email filing protocols, and established an on-line Web base industry look-up site for form and rate filings.

In addition, during 2003-2004, the Division and its IT Support, in conjunction with the NAIC SERFF Team, developed and implemented a partial API Interface between SERFF and the Department's back office database application, OTIS. The partial one-way API link is a seamless process of data migration between both applications. SERFF is an electronic form and rate filing application developed by the NAIC. The system enables a filer to electronically submit a product for review at a central site, which transmits it to all states in which it will be marketed. The OTIS database application features a unique form and rate review environment enhancing speed to market objectives, and is also used through the Department for various record retention uses.

The Division continued to refine its internal database system to enhance the filing process for both external and internal users. The focus for this biennium was to reduce duplicative database processes with the introduction of an API link between OTIS and SERFF, giving staff more time to focus on speed-to-market initiatives with regard to form and rate reviews. The end result is an improved speed-to-market for the industry and a reduction in paper storage needs. Also worth noting is the ability for public viewing of filings via the internet.

The Division reviewed complex form and rate filings during the biennium. New products, many of which contain innovative and complex provisions, were submitted to the Life and Health Division analysts for review. Despite the complexity and volume of filings, the average total review time from date of receipt to date of approval was 19 days. As part of the speed-to-market initiative, the NAIC established the IS3 goals of having all form and rate filings completed within 60 days of the date of receipt. For the two year period ending Dec. 31, 2004, the Life and Health Division completed the review of 94 percent of all approved files within 60 days of the date of receipt.

Life and Health Form and Rate Filings

	Forms Filed	Rates Filed	Total Filed
2003	17,527	750	18,277
2004	19,852	673	20,525

Third Party Administrator Licenses

	Issued	Registered
2003	179	92
2004	193	117

Viatical Settlement Providers Licenses

	Issued
2003	14
2004	14

Speed to Market

	NAIC IS3 Goals	2003 Total	2004 Total
20 days or less	50%	71%	70%
21 to 25 days	70%	76%	76%
26 to 30 days	95%	80%	81%
31 to 60 days	100%	93%	95%
More than 60 days		7%	5%

Seniors' Health Insurance Information Program

The Seniors' Health Insurance Information Program (SHIIP), a division of the North Carolina Department of Insurance, provides health insurance information counseling and assistance to Medicare beneficiaries and/or family members in North Carolina. The program is coordinated in each county through an existing human service agency such as a Council on Aging office, a Senior Center, or a Cooperative Extension office. These agencies serve as sponsors and provide important continuity, an available point of access, and are models for interagency cooperation. Currently there are 108 SHIIP sponsors in

our state. SHIIP was established in 1986 in response to an increased number of calls, letters and complaints from older North Carolinians confused by their health insurance options. Those persons who utilize the program most frequently are typically seniors, disabled individuals and caregivers or adult children.

The activities and duties performed by SHIIP provide a valuable service to the state's senior population. SHIIP's primary objective is to educate the public on seniors' health insurance concentrating on Medicare, Medicare supplements, Medicare Advantage and Long-Term Care insurance. The services offered by SHIIP are accomplished by training volunteer counselors in all 100 counties of North Carolina to educate and counsel their peers on seniors' health insurance, operation of a statewide toll-free line from the Raleigh SHIIP office and developing educational materials to consumers.

Major Initiatives and Accomplishments

- Currently SHIIP has 970 volunteer counselors and 108 volunteer county coordinators. From January 2003 to December 2004, SHIIP staff trained 268 volunteers representing 65 counties in the basic curriculum and certified 104 volunteers representing 21 counties as long-term care insurance specialists.
- The SHIIP toll free counseling service answered 44,207 calls from January 2003 through December 2004, averaging 1,800 calls a month.
- SHIIP counselors spent 12,883 hours in volunteer counseling sessions and held 15,416 individual counseling sessions during the period.
- SHIIP staff conducted and/or participated in 1,485 educational seminars, health fairs and speaking engagements during this period. In addition SHIIP participated in 31 radio interviews and 32 television appearances.
- To promote SHIIP's services to the public, 165,816 direct mailers were sent to individuals turning 65 in or during 2003 and 2004. In addition, 10,315 mailings were sent out of the SHIIP office to individuals based on their request for materials. These requests included informational brochures, *Medicare Supplement Comparison Guides* and the National Association of Insurance Commissioners' (NAIC's) *Guide to Long-Term Care Insurance Information.*
- SHIIP creates a number of consumer publications on a yearly basis including the *Medicare Supplement Comparison Guide,* the *Guide to Long-Term Care Insurance in North Carolina* and the *Road to Medicare: Planning Your Drive Toward 65.* The Division also serves as a clearinghouse for Centers for Medicare and Medicaid Services (CMS) publications.
- Each year SHIIP staff members appear on "OpenNet", the statewide call-in television program produced by the Agency for Public Telecommunications.
- The North Carolina SHIIP was one of the recipients of the CMS Beneficiary Services Certificate of Merit award.
- SHIIP's www.ncshiip.com provides access to SHIIP's consumer publications as an interactive Medicare Supplement insurance premium database on the Web site. This database provides consumers with up-to-date information about Medicare

supplement policy choices, premium costs, rate history and coverage. There were approximately 85,000 hits to the SHIIP Web site during this period.

- In August 2003 SHIIP was awarded a three year Medicare Senior Patrol Grant from the Administration on Aging (AOA). The project referred to in North Carolina as the Medicare Lookout Project's, main objective is to fight Medicare/Medicaid waste, fraud and abuse.
- SHIIP maintains a statewide partnership with the public library system. Presently there is an updated *SHIIP Resource Guide* in 100 libraries, one in each county seat.
- SHIIP was awarded federal funds to carry out the Medigap Monitoring Demonstration Project in North Carolina in an effort to monitor the quality of information and service being imparted to Medicare beneficiaries in the state by insurance companies. In August and October 2003, SHIIP conducted Medigap Training Seminars to over 200 licensed Medicare supplement insurance agents in our state.
- In partnership with the DOA and AARP, SHIIP co-produced a brochure on long-term care, *It's About You, Your Children, and Your Parents; Planning Today for Tommorrow.*
- As a result of the Medicare Prescription Drug Improvement and Modernization Act of 2003, SHIIP was tapped by the Centers for Medicare and Medicaid (CMS) to play a key role in educating older North Carolinians about the Medicare Discount Card Program and the Transitional Assistance Benefit.
- SHIIP served as a partner in the statewide initiative to inform and educate older adults, their caregivers, aging and health care service providers and others in the state on the Medicare Discount Card Program and the state prescription drug assistance program along with the North Carolina Division of Aging and Adult Services, North Carolina AARP Office, North Carolina Division of Medical Assistance, North Carolina Office of Minority Health and Health Disparities, Social Security Administration, North Carolina Office of Research, Demonstrations and Rural Health Development which administers the Senior Care Program, North Carolina Association of Area Agencies on Aging and The Office of the Governor. Monthly meetings were attended among partners to coordinate effort and partners linked websites and communicated regularly by email to share information.
- SHIIP conducted 17 training sessions in spring 2004 to educate aging network providers and SHIIP volunteers about the Medicare Discount Card Program and the Transitional Assistance Program. Over 1,000 people attended these sessions.
- Counseling Days were scheduled in all 100 counties by SHIIP in June through August to counsel individual seniors about the Medicare Discount Card Program and the Transitional Benefit. Calls to the SHIIP office from persons requesting counseling peaked at 4,448 in May 2004.

- SHIIP staff and volunteers participated in the Senior Care Sign-Up Day in October across the entire state. One hundred twenty-six sign up sites were established for this initiative.
- SHIIP subcontracted with the Division of Health and Human Services Office of Minority Health and Health Disparities (OMHHD) Office to do special outreach to low income minorities in targeted counties.

Major Activities and/or Goals

- SHIIP will make every effort to inform the citizens of North Carolina about the program's services. This includes Medicare beneficiaries, caregivers, adult children of aging parents, aging network professionals, medical providers, etc.
- Through counseling, education and outreach SHIIP will continue to help beneficiaries identify, understand and enroll in programs and plans, when eligible and appropriate, including Medicare Advantage Plans, Medicare supplement insurance, Medicare Savings Programs and long-term care insurance.
- Efforts will continue to inform the public about long-term care funding and payment options. Employers and baby boomers are among the groups identified as important to reach. In addition SHIIP volunteers, aging professionals, I and A Specialists and Long Term Care Ombudsmen will receive Long Term Care Training and certification from SHIIP.
- SHIIP will stand ready to respond to Medicare beneficiaries on Medicare Advantage or employer group health plan terminations and provide materials and information if necessary.
- SHIIP plans to continue efforts with regard to the Medicare Lookout Program.
- SHIIP will focus on strategies to reach the Hispanic, African American and disabled populations.
- SHIIP will continue to partner and network with public libraries in the state to include activities such as using the library as counseling sites, training sites and resource material clearinghouses.
- SHIIP will continue to partner with the Social Security Administration Offices in the state in order to reach increased targeted populations.
- SHIIP will continue efforts to promote computer use and Internet access by seniors.
- Special efforts will be made to respond to persons who have specific needs or concerns; in particular, those who have high prescription drug costs as well as disabilities.
- With the availability of the Medicare Prescription Discount Care and the Senior Care Program and the new prescription drug benefit available in 2006, SHIIP will focus on assisting beneficiaries in gaining insurance protection for prescription drug costs and help them receive the coverage needed with an emphasis on assisting low income beneficiaries and beneficiaries who lack insurance coverage for drug expenses.

Market Examinations Division

The Market Examinations Division monitors insurance company market practices, especially as they affect consumers. The examination methods employed by the Division are based on a program developed by the National Association of Insurance Commissioners (NAIC). By agreeing to pilot the NAIC program over 25 years ago, North Carolina became the first state in the nation to conduct market examinations along the lines promulgated by the NAIC.

The Division places a priority on automating examination processes. The Division uses audit command language software for 100 percent of the testing on property and casualty examinations. Additionally, this is an ongoing project for life and health examinations. These combined automation efforts result in increased review of company operations, allowing examiners to spend more time on potential problem areas rather than "routine" tasks, and also result in substantial savings to the public since more work can be done in our offices rather than at company offices.

The Division monitors the activities of foreign and domestic insurance carriers operating in North Carolina and is capable of responding to special problems or concerns related to company practices.

Examinations are conducted on a regular rotation so that all companies domiciled in North Carolina and dominant foreign companies are examined on a five-year cycle.

Examinations are divided into three categories: general, compliance and target. The three types of examinations require distinct protocols to ensure that companies are treated fairly and without prejudice or unfair discrimination. Market analysis plays a major role in the identification and selection of insurers that will undergo a market conduct examination. Market analysis involves continuous surveillance of the marketplace to determine potential problem areas.

Market Examination Summary

Year	Life & Health Exams	Property & Casualty Exams	General Exams	Compliance Exams	Target Exams
2003	13	23	22	14	0
2004	15	29	24	18	2

Managed Care and Health Benefits Division

The Managed Care and Health Benefits Division monitors and regulates the activities of managed care entities, including health maintenance organizations (HMOs); preferred provider organization benefit plans (PPOs); managed care indemnity health insurers and multiple employer welfare arrangements (MEWAs). The Division focuses on the non-

financial aspects of company practices and the impact of those market practices on consumers.

In order to deliver the cost controls demanded by purchasers and consumers, managed care organizations apply a broad array of policies and techniques that have tremendous impact on consumers. These include requirements relating to provider networks, as well as programs and policies that consumers and their treating providers must follow as a condition of coverage for services.

The techniques employed by managed care plans to promote quality care and eliminate unnecessary care can also result in disputes over coverage for services promised under a consumer's policy. Thus, the Department's traditional regulatory oversight of company marketing practices, treatment of policyholders and solvency are expanded to include those systems that are unique to managed care plans.

The Division accomplishes its work through several types of activities, including coordination of the Department's review of certificate of authority and license modifications of HMOs and MEWAs; reviewing annual and initial filings of PPO benefit plans; conducting market practice examinations of company operations; collecting, analyzing and reporting HMO and PPO annual data; approving provider and intermediary form contracts; investigating and resolving provider complaints against managed care plans; and providing information and guidance on managed care laws to industry and interested parties.

The Division's examination program provides for examination of each HMO on at least a triennial basis and, beginning in 1999, the Division added examinations of PPO benefit plans. General exams include review of the non-financial aspects of company operations, including management and control, provider network development and credentialing, utilization management programs, quality management activities, third-party contracting arrangements, marketing, member services, claims payment and underwriting practices. Compliance examinations are scheduled 12 to 18 months after a general exam in order to ascertain whether the company has taken corrective action to address problems found during the previous general examination. The Division is also responsible for licensure exams which include review of applicant companies' planned operations, as well as an on-site pre-licensure examination. When resources permit, a licensure follow-up examination is conducted approximately 12 months after a new HMO has been licensed to ensure that actual operations are in accordance with those proposed in the licensure application.

In addition to regularly scheduled market conduct examinations, the Division also takes other regulatory actions in response to market activities that are determined to be in violation of state laws. In 2002, one such action against an insurer resulted in collection of an administrative penalty in the amount of $1,825,000; in 2004, action against another insurer resulted in an administrative penalty of $2,200,000. In both cases, settlement agreements set out plans of correction detailing how the companies would remedy the

violations discovered in these investigations. In 2003, a total of $16,919,378 was recovered as a result of examinations and other regulatory actions; the amount recovered in 2004 was $2,386,084.

HMO and PPO Examinations				
Exam Type	**CY 2003 HMO**	**CY 2004 HMO**	**CY 2003 PPO**	**CY 2004 PPO**
General				
Compliance		3	2	3
Follow-up	1		4	
Total	**1**	**3**	**6**	**3**

The review of form health care provider contracts used by HMOs and managed care indemnity health insurers is performed to establish compliance with regulations pertaining to carriers' responsibilities for arranging the provider networks to which insureds are directed and to determine compliance with regulations governing the utilization review process and the member appeal process. The Division met its target for completing review of contract forms in 60 days or fewer, for 95 percent of contracts filed in 2003 and 94 percent of contracts filed in 2004. The review of PPO application filings and PPO and HMO annual filings also permits evaluation of carriers' written policies and procedures regarding provider networks, utilization review programs and member appeals processes.

Managed Care Filings

Year	Provider Form Contracts	HMO and PPO Filings
2003	396	72
2004	361	59

In addition to form filings, the Division receives and handles all complaints against health insurers filed by health care providers. In 2003, 641 complaints were filed with the Division; 911 complaints were filed in 2004, representing a 42 percent increase. In 2004, $7,869,892 was recovered as a result of provider complaint investigations.

Since 1996, the Division has produced an annual Status Report and Analysis of Activity for HMOs that includes information on plan enrollment trends and plan penetration in the consumer market. The Division expanded the Report in 2000, to include data on PPOs and additional data on HMOs. The *Status Report and Analysis of Activity for HMOs and PPOs* was published in 2003 and 2004.

Legislation enacted in 1997 enabled the Division to collect data in a uniform format from HMOs and PPOs, providing consistent and comprehensive information to better inform

the Department, the industry and consumers on the practices of these benefit plans. Beginning in 1999, HMO and PPO carriers must report on March 1 of each year summary information on:

- grievances and noncertification appeals
- changes in enrollment
- provider turnover
- provider availability and accessibility
- utilization and utilization review activity
- provider compensation methods
- costs
- HEDIS® outcomes measures

Since 1999, the Division has published this information in consumer guides to managed care, publishing guides in 2003 and 2004.

Since laws were enacted to license multiple employer welfare arrangements (MEWAs), 11 licenses have been issued. The Division reviews MEWA initial and annual license applications, coordinating their approval with other divisions, similar to the coordinated review of HMO certificates of authority.

MEWAs Licensed

Year	Licensed	Terminated
1993	3	
1994	2	
1995	0	
1996	1	
1997	0	
1998	1	1
1999	1	3
2000	2	
2001	0	
2002	1	1
2003	0	0

Healthcare Review Program

The Healthcare Review Program (HCR Program), a unit within the North Carolina Department of Insurance, administers the Health Benefit Plan External Review statutes, NCGS 58-50-75 through 95. External review is the independent medical review of a health plan denial and offers another option for resolving coverage disputes between a covered person and his or her insurer. In North Carolina, external review is available to covered persons when their insurer denies coverage for services on the grounds that they are not

medically necessary. This type of denial is referred to as a "noncertification decision." Denials for cosmetic or experimental services may be eligible for external review, depending on the specific circumstances of a case. The law applies to persons covered under fully insured health benefit plans, the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan and the Health Insurance Program for Children (CHIP).

To be accepted for external review, a covered person must meet eligibility requirements. A request is made directly to the HCR Program, where program staff is required to review each request for completeness and eligibility. In order to do this, information is received from the insurer within statutorily required time frames and, if needed, additional information is requested from the covered person. Once accepted for external review, the case is assigned to an independent review organization (IRO) for clinical review. The IRO issues a determination within the statutorily required time frame for the specific request (within 45 days of the HCR Program's receipt of a request for a standard review and four days for an expedited review). The Program monitors compliance with the statutory and contractual requirements of the parties involved in external review.

The HCR Program also provides consumer counseling on utilization review and internal appeals and grievance issues. Consumers speak with professional registered nurses who are clinically experienced and knowledgeable regarding medical denials. HCR Program staff provides information to consumers on their appeal process and suggest approaches to accessing the process specific to their case. Staff advise the consumer of the availability of External Review services, should that be necessary.

HCR Program Initiatives and Achievements

- The Healthcare Review Program completed a number of successful outreach initiatives during the past two years. Community outreach and education activities have included participation in health fairs, speaking engagements to consumers, physicians and office practice administrators, hospital administration, and television interviews. Two comprehensive physician education initiatives included: 1) the mailing of a letter from the Commissioner of Insurance to nearly 16,000 actively practicing physicians in North Carolina which explained the importance of external review services and included a brochure about the Program, and 2) a comprehensive mailing to all physician office practice managers and hospital business office managers in North Carolina that included External Review brochures and a sign appropriate for office posting that alerts consumers to the assistance available to them through the HCR Program.

- Consumer information continues to be available to the public through the Department's Web site. A request form, instructions for completing a request form,

FAQ's and a brochure entitled "A Consumer's Guide to External Review" are available for consumers on the Web site. During 2004, revisions were made to the Web site content to provide more comprehensive information to the public regarding Consumer Counseling and External Review. The Request Form used to request and External Review was simplified to create a more "user-friendly" form and to reduce the number of pages that were required to be completed.

- NCGS 58-50-85 outlines the process for the approval of Independent Review Organizations (IROs) to be utilized in the process of external review. During 2003, four of the five original IROs approved for use in the Program agreed to extend their existing contract for a one-year period. The Program issued a Request for Proposal for Independent Review Organizations to Perform Reviews of Health Plan Utilization Review Noncertifications in August of 2003. One additional IRO was approved for use by the Program and began services on Jan. 1, 2004, under a two-year contract with an option to renew for one additional year. During the latter part of 2004, the Program drafted another RFP to be posted early in 2005, in preparation for the termination of four existing IRO contracts.

- During 2003 and 2004, the Program conducted a compliance audit of three contracted independent review organizations (IROs) who provide independent medical review of health plan coverage denials. The purpose of the audit is to assure that IROs assigned to conduct external reviews are in compliance with statutorily required activities, contractual terms and written requirements regarding the procedures for handling a review. All three IROs were determined to be in full compliance with North Carolina statutory requirements.

External Review Activity during 2003 and 2004

During this two year period, the HCR Program received 421 requests for external review. One hundred sixty-seven cases were eligible and accepted for review, with 163 having an outcome as of Dec. 31, 2004. One was reversed by the insurer prior to being assigned to an IRO, 95 cases had the insurer's decision upheld by the IRO and 67 cases were overturned. During this time frame, the cumulative total of services provided to consumers as a result of external review is $844,141.

Consumer Counseling Activity

During the 2003-2004 timeframe, the HCR Program received 2,881 telephone calls from consumers with questions relating to appeals, grievances or external review. The Program provided counseling to 396 consumers in 2003 and 535 consumers in 2004, realizing a 35 percent increase in consumer counseling activity from 2003 to 2004. The Program attributes this increase to its consumer outreach activities and the addition of a separate Consumer Counseling Web page in May 2003.

Program Activity Measures

Activity Measure	2003	2004
External Review		
Number Received & Evaluated for Eligibility	220	201
Number Accepted for External Review	90	77
Consumer Counseling		
Number of Cases	396	535
Consumer Calls		
Total Calls Answered (External Review and Consumer Counseling)	1468	1413

Public Services Group

The Public Services Group is comprised of the Consumer Services, Agent Services and the Investigations Divisions.

The Consumer Services Division assists North Carolina consumers by answering insurance questions and resolving their insurance problems. A staff of consumer specialists advises and acquaints consumers with courses of action they may pursue to resolve their particular insurance problem.

The Agent Services Division is responsible for the regulation of all agents, brokers, limited representatives, appraisers, adjusters, premium finance companies, collection agencies, motor clubs, bail bondsmen, surety agents and bail bond runners authorized to do business in North Carolina. This includes pre-licensing education, continuing education, agency examinations and administrative actions.

The Investigations Division conducts criminal investigations of insurance-related crimes committed by policyholders, claimants, insurance producers and insurance companies. The division also conducts criminal investigations involving bail bonding, collection agency and premium finance activities.

Consumer Services Division

The technical and complex nature of insurance generates a multitude of questions from the consuming public and from many segments of the insurance industry itself. The Department's Consumer Services Division handles questions touching upon all types of insurance products. Each year this Division provides valuable assistance to a broad array of our citizens.

During the 2003-2004 biennium, Division staff handled over 160,000 inquiries from consumers. Each year the staff processed approximately 12,000 written consumer complaints. A computerized data format allows for continuous updates and changes on each complaint file. Such computerized complaint handling and the accumulation of related information offers important indications of how well departmental regulatory measures are affecting insurance market practices.

The Division was able to assist the citizens of North Carolina by recouping over $19,000,000 for claims/underwriting concerns during the 2003-2004 biennium. Statistical data for the Division is listed in the following charts.

Consumer Assistance	2003	2004
	$9,247,960.05	$10,096,568.30

The division experienced a decrease in the number of inquiries (14 percent) and the number of complaints (6 percent). The decrease in reported inquiries is due to a realignment of work in early 2004. The switchboards are now providing phone numbers and addresses for carriers, thus allowing the communications specialists more time to handle insurance related inquiries.

	2003	2004
Inquiries:	**89,685**	**76,933**
Life & Health	40,866	35,281
Property & Casualty	48,819	41,652
Complaints:	**12,348**	**11,910**
Life & Health	5,797	5,756
Property & Casualty	6,551	6,154

The breakdown of the complaints is as follows:

Life & Health:	2003	2004
Life & Annuity	26%	29%
Accident & Health	74%	71%
HMOs*	11%	15%

Property and Casualty	2003	2004
Automobile	64%	60%
Homeowner	22%	17%
Other	14%	23%

**Percentages for HMOs are a subset of the Accident and Health percentages.*

	2003	2004
Internet:	**4,708**	**4,310**
Life & Health	1,893	1,738
Property & Casualty	2,815	2,572
Receptionist/Switchboard:	**82,723**	**86,548**
Walk-in Visitors	245	220
Calls through the Switchboard	82,478	86,328

The division distributed some 11,015 publications during the 2003 calendar year. The top four publications mailed were:

It Pays to be a Safe Driver	8,372
Consumer's Guide to Health Insurance	1,959
Consumer's Guide to Auto Insurance	998
Consumer's Guide to Life Insurance	418

The division distributed some 22,712 publications during the 2004 calendar year. The top four publications mailed were:

It Pays to be a Safe Driver	16,251
Consumer's Guide to Auto Insurance	1,710
Consumer's Guide to Health Insurance	1,115
NC Individual Health Insurance Carriers	874

The Division serves as a significant front-line service organization. Consumer Services staff continually strive to improve the quality of their service to consumers through professional training and continuing education. Additionally, the "hotline" section was recently reorganized to enable specialization between the Property and Casualty and the Life and Health lines of insurance. As such, the staff can field more complex inquiries in their lines of expertise and provide answers thereto with as much detail as is needed to properly answer consumer questions.

Agent Services Division

The Agent Services Division regulates all licensed agents, brokers, limited representatives, appraisers, adjusters, premium finance companies, collection agencies, motor clubs, bail bondsmen, surety agents and bail bond runners authorized to do business in North

Carolina. This includes pre-licensing education, continuing education, agency examinations and administrative actions.

The Division handles requests from the various Clerks of Court as it relates to requests for payment of bail bond judgments. During the recent biennium, the division liquidated over $750,000 in securities held by professional bail bondsmen. Statistics are listed below:

Securities Liquidated:	**2003**	**2004**
Professional	$434,747.19	$334,586.24

The Division continued to experience increases in licensure and appointment matters. Revenues collected by the Division referenced over $22,000,000 in both 2003 and 2004. Statistics for these areas are as follows:

	2003	2004
Licensing:		
Appointments	80,074	82,920
Terminations	39,060	42,413
Lifetime Licenses	28,223	25,195
Limited Representatives	4,208	3,382
Brokers	442	470
Adjuster/Appraiser	4,606	4,988
Professional Bail Bondsmen	5	11
Bail Bond Runners	63	53
Surety Agents	201	175
Surplus Lines/Purchasing Groups	133	184
Corporations/Partnerships	1,347	1,389
Motor Clubs (B/O)	0	0
Collection Agencies	77	199
Premium Finance Companies	6	10
Continuing Education:		
CE Courses Approved	1,157	1,330
Financial:		
Insurance Related Revenues	22,589,777.10	$22,926,781.30
Non-insurance Revenues	529,137.00	$673,985.00
Regulatory:		
CE Courses Monitored	100	168
Agency Examinations	146	167

The Division created a complaint section to handle complaints associated with agents, brokers, bail bondsmen and other entities regulated. The Division experienced a 60.4 percent increase in complaints from 2003 to 2004. Additionally, administrative activity increased as the division effectively handled concerns presented by both applicants for licensure and current licensees. Monetary penalties assessed by the Division increased approximately 73 percent from 2003 to 2004.

	2003	2004
Complaints:		
Insurance & Non-Insurance Related	465	746
Conferences	81	82
Licenses Denied	195	265
Licenses Revoked	3	5
Licenses Suspended	10	17
Licenses Surrendered	38	12
Administrative Hearings	12	18
Monetary Penalties	$18,100.00	$31,500.00
Notices of Deficiencies	7	12

Investigations Division

The Investigations Division conducts criminal investigations of insurance-related crimes committed by policyholders, claimants, insurance producers and insurance companies. The division also conducts criminal investigations of bail bonding, motor club, collection agency and premium finance industries.

During 2003-2004, case referrals and allegations of fraud submitted for investigation by this Division have remained at a consistently high level. This, of course, is reflective of the problem of insurance fraud itself as well as indicative of the steady increase of fraud awareness on the part of both the consumer and the industry. In addition, over the last two years, the Division has made a concerted effort to continually assure that quality investigations are being pursued so that the North Carolina consumer is most effectively served. This commitment to quality has resulted not only in impressive statistical achievement, but also in a more efficient and effective operation.

	2003	2004
Incoming Referrals:		
Industry	561	257
NICB	806	684
Government Agencies	22	19
Citizen Complaints	189	259
Law Enforcement	12	37
DOI Divisions	80	58
Outgoing Referrals:		
Law Enforcement	9	0
Administrative Agencies	37	77
DOI Divisions	99	148
Investigations Assigned:	211	254
Investigations Closed:	150	304
Active Investigations:	406	228

Thirty-eight convictions were achieved in 2004 (an increase of 58.3 percent over the 2003 numbers). The 38 convictions are the most ever for the Division. Cases worked involved Professional Employer Organizations (PEOs), unauthorized insurance, chiropractor fraud, viatical fraud, staged accidents, embezzlement and fraud associated with insurance activity (FEMA and claim adjudication), and certain bail bonding related matters.

Successful case resolutions increased 90.7 percent from 2003 to 2004. In addition, monetary recoveries and restitution associated with convictions increased substantially during the 2003-2004 biennium. Numbers for 2003 and 2004 are listed below:

	2003	2004
Successful Case Resolutions	**(43) $5,283,111.07**	**(82) $8,389,824.14**
Convictions	(24) $5,072,767.35	(38) $6,205,119.07
Monetary Recoveries	(19) $210,343.72	(44) $2,184,705.07

The division head was responsible for fraud training activity associated with regulators and the industry, both in North Carolina and elsewhere. Fraud Director's roundtables, viatical fraud, PEO fraud, unauthorized entities, agent embezzlement, and other topics have been taught by the division head and certain investigators at NAIC, North Carolina Association of Special Investigators and North Carolina Insurance Crime Information Exchange sponsored training.

Insurance fraud related cases have been and are being addressed in the areas of health care, workers' compensation, unauthorized insurers, Multiple Employers Welfare Arrangements, employee leasing companies, surety bonds and the traditional claimant and agent fraud covering all lines of insurance.

The Division remains a vital entity of the North Carolina Department of Insurance, often assisting other internal regulatory divisions in the identification of subjects, schemes and entities requiring attention. Investigators regularly testify at departmental hearings and assist in the preparation of new or amended anti-fraud legislation.

Personnel of this Division are active and respected members of industry anti-fraud organizations, law enforcement related organizations and task forces throughout the state. Memberships include the North Carolina Insurance and Health Care Fraud Task Force, the North Carolina Insurance Crime Information Exchange, North Carolina Police Executives Association, the National Association of Insurance Commissioners Anti-Fraud Task Force, the International Association of Special Investigations Units and the North Carolina Sheriff's Association. Division personnel regularly receive insurance and law enforcement related training and often are called upon to represent the Department by giving presentations and training to various groups in North Carolina and across the nation.

The Investigations Division stands ready to meet the many challenges that the future holds. As the very infrastructure of insurance methods and operations radically change, so will the methods and operations of the insurance fraudster. Internet-based insurance transactions and electronic licensing/appointing functions unveil an entire universe of illicit opportunities to those intent on cheating the system. Banks and other financial institutions are entering the insurance market and insurance companies are diversifying as well. This will broaden the scope of potential fraud into a multitude of areas and will require a coordinated and uniform response from regulators, law enforcement and the industry. The Investigations Division is committed to meeting these challenges now and in the future.

Office of the General Counsel

This organizational unit provides internal legal advice to all divisions of the Department. The Department's General Counsel also acts as liaison with the Attorney General. The office coordinates hearings on a wide variety of administrative matters and prepares complex orders and memoranda for the Commissioner. The General Counsel serves as the Department's primary hearing officer having final agency decision authority, and reviews Department contracts with suppliers and consultants.

General Counsel

The General Counsel gives legal direction and counsel to the Commissioner and all members of the Department in areas of law relating to the entities regulated by the Department, which include: the insurance industry, the bail bond industry, collection agencies, premium finance companies and building inspectors. The General Counsel also provides advice to the Department on a wide variety of procedural matters, including the Administrative Procedures Act and Rules of Civil Procedure. Additionally, the General Counsel provides legal advice pertinent to the running of the Department itself, such as advice on personnel matters, and the public records law.

Between January 2003 and December 2004, the General Counsel's office responded to over 930 legal service requests from Department personnel without the involvement of the Attorney General's office. Further, the General Counsel serves as the Department's primary hearing officer for a wide variety of administrative hearings under Article 3A of Chapter 150 B of the North Carolina General Statutes. During the 2002-2004 Biennium, the General Counsel's office has been involved in over 90 administrative hearings.

The General Counsel evaluates the effectiveness of the work of the Attorney General in the context of providing advisory opinions and handling administrative proceedings and other litigation. The General Counsel also litigates cases at the instruction of the Commissioner of Insurance when the Department of Justice has conflicts with representing the Department of Insurance.

Ratemaking Litigation

During the 2003-2004 Biennium, Rate Counsel worked on a wide range of rate matters and other regulatory issues. Rate Counsel also continued to litigate contested rate cases involving personal lines of insurance under the jurisdiction of the North Carolina Rate Bureau ("Rate Bureau"). Rate cases of significance during this Biennium are detailed below.

1. 2001 Private Passenger Automobile Insurance Filing

On May 1, 2001, the Rate Bureau filed the 2001 Private Passenger Automobile Filing proposing an overall rate increase of 10.6 percent for private passenger cars. The

Commissioner issued a Notice of Hearing in this case and hearing commenced on Sept. 25, 2001. On Dec. 14, 2001, the Commissioner ordered an overall rate level decrease of 13.0 percent for private passenger cars.

The Rate Bureau appealed the Commissioner's Order to the Court of Appeals, which entered a decision affirming the Commissioner's Order in full on Oct. 7, 2003. The Rate Bureau then further appealed this case to the North Carolina Supreme Court, which entered a decision on June 25, 2004, affirming the Court of Appeals and finding in favor of the Commissioner.

As a result of the Supreme Court decision, the Commissioner issued an Order for Refunds on July 22, 2004 requiring all funds held in escrow for the 2001 case plus interest at 7.33 percent to be refunded to the eligible North Carolina policyholders by October 29, 2004. The potential savings and refunds (excluding interest) to the consumers on this case amounted to as much as $573 million.

2. 2002 Private Passenger Automobile Insurance Filing

On Feb. 1, 2002, the Rate Bureau filed the 2002 Private Passenger Automobile Filing proposing an overall rate level increase of 5.9 percent for private passenger cars. The Commissioner issued a Notice of Hearing in this case and hearing commenced on July 15, 2002. On Oct. 14, 2002, the Commissioner ordered an overall rate level decrease of 17.8 percent.

The Rate Bureau appealed the Commissioner's Order to the Court of Appeals, which heard oral arguments on this case on June 8, 2004. While the decision from the Court of Appeals was still pending, this case was settled on July 22, 2004. As a result of the settlement, auto insurers were ordered to refund certain escrowed funds plus interest at 7.13 percent to eligible North Carolina policyholders by Nov. 30, 2004. The potential refunds to the consumers on this case amounted to as much as $245 million.

3. 2003 Private Passenger Automobile Insurance Filing

On Jan. 31, 2003, the Rate Bureau filed the 2003 Private Passenger Automobile Filing proposing an overall rate level decrease of 10.0 percent for private passenger cars. A settlement was reached in this case on April 2, 2003, wherein the existing level for private passenger cars was decreased by 15.0 percent. The settlement resulted in a potential premium savings to consumers of up to $254 million.

4. 2004 Private Passenger Automobile Insurance Filing

On Feb. 2, 2004, the Rate Bureau filed the 2004 Private Passenger Automobile Filing proposing an overall rate level increase of 12.2 percent for private passenger cars. The Commissioner issued a Notice of Hearing on this matter and hearing was set to commence on July 26, 2004. However, immediately prior to the commencement of the hearing, this case was settled on July 22, 2004 for a 0.0 percent change in rates. This settlement resulted in a potential premium savings to consumers of up to $390 million.

5. 2003 Dwelling Fire and Extended Coverage Filing

On June 26, 2003, the Rate Bureau filed the 2003 Dwelling Fire and Extended Coverage Filing proposing an overall increase of 42.8 percent. This filing was a companion filing to the 2002 Homeowners' Insurance Filing that had been settled the previous year. This case was eventually settled on Aug. 6, 2003 for an overall increase of 13.6 percent, representing a potential premium savings to consumers of up to $35 million.

6. 2003 Workers' Compensation Loss Costs and Residual Market Filings

On Aug. 29, 2003, the Rate Bureau filed the 2003 Workers' Compensation Loss Costs and Residual Market Filings proposing an 8.2 percent increase in loss costs and a 19.5 percent increase in residual market rates. Both filings were settled on Nov. 6, 2003, for a 1.0 percent decrease in loss costs and a 5.0 percent increase in residual market rates. The settlement represented a potential premium savings of up to $92 million.

7. 2004 Workers' Compensation Loss Costs and Residual Market Filings

On Sept. 03, 2004, the Rate Bureau filed the 2004 Workers' Compensation Loss Costs and Residual Market Filings proposing an 8.7 percent increase in loss costs and an 8.7 percent increase in residual market rates. Both filings were settled for a 2.0 percent increase in loss costs and a 4.0 percent increase in residual market rates. The settlement represented a potential premium savings of up to $69 million.

Office of State Fire Marshal

Since the late 1940s, the Commissioner of Insurance has served as the State Fire Marshal by North Carolina General Statute. Groundwork for this began in 1907 when the General Assembly established the "Firemen's Relief Fund," requiring the Commissioner to collect funds from insurance companies to be used for relief of distressed firefighters.

In an effort to bring more focus and visibility to this Division's programs, the Office of State Fire Marshal (OSFM) was formally established within the Department of Insurance on April 1, 1998.

OSFM is comprised of the following six divisions: Engineering and Codes, Manufactured Building, Risk Management, Fire and Rescue Training and Inspections, Fire and Rescue Commission, and Programs, Prevention and Grants.

OFSM administers and enforces life safety standards throughout the state, promotes risk management practices throughout government and maintains a sound insurance program for state agencies.

The Engineering Division is comprised of seven sections: code consultant, state property plan review, mechanical, home inspection, inspector certification, building code council and handicapped accessibility. This Division administers the state building code and provides staff to the North Carolina Building Code Council, the North Carolina Code Official Qualifications Board and the Home Inspectors Licensing Board.

The Manufactured Building Division works to assure that construction standards for manufactured homes are maintained and that warranty obligations under state law are met. The Division monitors handling of consumer complaints, licenses the makers of manufactured homes, dealers, sales representatives and set-up contractors and acts as staff for the North Carolina Manufactured Housing Board.

The Risk Management Division administers the self-insurance funds for state-owned property and vehicles, and procures from private insurance companies other types of insurance needed by the state agencies and universities. This Division inspects all state-owned facilities for fire and life safety and inspects all new state-owned facilities for Electrical Code compliance. Also, the Division assists local governments with property and casualty insurance programs and makes available professional liability coverages for law enforcement officers, public officials and employees of any political subdivision in the State. This Division also provides staff, administration, and research services to the Public Officers and Employees Liability Insurance Commission (POELIC).

The Fire and Rescue Commission Division serves as staff to the Fire and Rescue Commission and handles the state's voluntary certification system comprised of 16 levels and 40,000 individuals, as well as the State Fire and Rescue Incident Reporting System.

The Program Development, Prevention, and Grants Division administers the Firemen's Relief Fund, Rescue Relief Fund, assists all divisions within the OSFM with development of programs and brochures and provides direction and support for injury prevention programs statewide. The Division also administers matching dollar-for-dollar grants to volunteer fire departments and rescue squads and offers fire prevention education in the public schools.

The Fire and Rescue Training and Inspection Division trains fire departments, rescue squads, and instructors to improve fire and rescue protection statewide. Through special schools, development of training programs and teaching outlines, and specialist training directed to instructors, this division provides continuous upgrade to the training of our states emergency workers. Fire departments' delivery capabilities are measured and upgraded by providing initial insurance ratings for fire departments, as well as coordination for the improvement of ratings to reduce insurance costs for homeowners.

Engineering Division

North Carolina's General Statutes give the Commissioner of Insurance the responsibility of general supervision of the administration of the North Carolina State Building Codes. The codes contain regulations relating to plumbing, electrical, heating, air conditioning and fire protection systems and the construction of buildings in general. The Division meets these responsibilities by providing interpretations of code requirements and assisting local government authorities with the application of the codes. It should be noted that the building codes are developed by the North Carolina Building Code Council, not the DOI.

The Division reviews plans and specifications of new buildings for code compliance, assists with code-related educational programs and administers state examinations required for certification of city, county and state code enforcement officials.

Division staff also administers the state's accreditation program of independent inspection agencies that safety test and label electrical and mechanical equipment.

In addition to serving as an informal state code appeals agency, the Division also serves as staff to the North Carolina State Building Code Council, the North Carolina Code Officials Qualification Board and the North Carolina Home Inspectors Licensure Board.

Code Administration and Enforcement

The Division provides interpretations of the intent of the state building code to city and county inspection officials, architects, engineers, contractors, material suppliers, manufacturers, other state agencies, attorneys and the general public.

The Division is responsible for reviewing plans and specifications for large buildings. Before a permit can be secured for these buildings, a letter of compliance must be issued by this Division to the inspection department having jurisdiction.

State law requires that handicapped and disabled persons receive treatment equal to that afforded other persons. The Division has an Accessibility Section, which provides information to handicapped organizations, design and construction professionals and building owners in the application of these state laws and the building code requirements relating to accessibility. This assistance helps provide our disabled citizens with the full and free use of all buildings in the state. Accessibility regulations are currently being revised to make North Carolina Code equivalent to federal Americans with Disabilities Act regulations.

Because some buildings require special construction, technical assistance is necessary from the Division to ensure that the building is safe. Inspection assistance is also provided for structures when deterioration, fire or storms create conditions, which appear to be hazardous to life.

	2003	2004
Plans reviewed	2,407	2,562
Office conferences	1,102	1,198
Telephone information requests	43,622	46,706
Schools, seminars and conference participation	1,491	963
Building Code Council meetings	32	43
Qualification Board Meetings	30	28
Qualification Board complaint investigations	17	23
Inspection certification schools coordinated	293	279
Inspection certification exams administered	1,152	1,325
Inspection certification applications reviewed	4,160	4,870
Inspection certification renewed and issued	5,696	4,870
Code Interpretations	2,190	1,478
Code publication sales	$1,492,153.00	$829,162.00
Home Inspector Board meetings/hearings	27	42
Home Inspector exams administered	343	436
Home Inspector applications reviewed	239	285
Home Inspector licenses issued/renewed	1,142	1,173
Home Inspector Complaint Investigations	31	28

Division staff also serves as the State Damage Assessment Team and assists the State Office of Emergency Management during disasters.

State Building Code Council Support

The Building Code Council consists of 17 members appointed by the governor. The Council is empowered to adopt and amend the state building code, hear appeals on the interpretation of the code and approve local building regulations which are different from the state code. The Council holds regularly scheduled public hearings on the second

Tuesday in March and September. Additional meetings are held by Council code committees.

State law permits the Building Code Council to provide, in circumstances deemed appropriate, programs to certify independent testing laboratories as state-accredited third-party agencies to evaluate, inspect and label factory-built manufactured buildings, and electrical and mechanical building components. Division staff administers this program.

Code Officials Qualification Board Support

This Board develops standards for the training and certification of code enforcement officials. The Division provides clerical and staff services in support of this effort. The Board is also responsible for developing training schools and state examinations for inspector certification. Some Division staff members serve as instructors; all state certification exams are administered by Division staff.

Persons certified by the Board are issued a certificate for each level and area of inspection for which they have met qualification requirements. The Division also investigates written, substantiated complaints against inspectors made to the Board, which may then schedule a hearing.

Home Inspectors Licensure Board Support

This Board was created by the General Assembly in 1994 to provide for the licensure and regulation of those who perform home inspections for compensation. This Board is composed of seven members and a designee of the Commissioner of Insurance. This Board provides for the development and maintenance of standards of practice, code of ethics, examinations, licensure, renewal and disciplinary procedures for home inspectors in North Carolina. The Division provides clerical and staff services in support of this effort. The staff provides all administrative functions for the Board including administering the examinations, issuing licenses, renewal of licenses and investigation of complaints.

Manufactured Building Division

This Division acts both as a state administrative agency under the federal Manufactured Housing Constructions and Safety Standards Act and as staff to the North Carolina Manufactured Housing Board.

The role of a state administrative agency is to monitor manufacturers' handling of consumer complaints to assure compliance with federal standards. Staff support of the Manufactured Housing Board includes receiving and resolving consumer complaints and licensing all manufacturers, dealers, set-up contractors and salespersons that do business in this state to ensure compliance with warranty requirements set forth in the General Statutes.

The Division is responsible for filing claims against surety bonds in the event dealers, manufacturers or set-up contractors go out of business or cannot otherwise fulfill their warranty obligations.

Manufactured Building is also responsible for developing set-up and anchoring standards for manufactured homes and assisting local inspection departments in the inspection of homes for proper set-up and anchoring requirements. Training seminars are held throughout the state each year to familiarize the local inspection departments, manufacturers, dealers, set-up contractors and other interested parties with the manufactured housing standards and any recent revisions to those standards.

This Division operates under two budgets, a State budget and a Federal budget. The Division's Federal budget is entirely receipt supported based upon fees received from HUD for new manufactured homes built within the State and fees for new manufactured homes placed within North Carolina for retail sale. The Division's State Budget is also receipt supported but during lean years, it is backed up with appropriations from the State's Insurance Regulatory Surcharge Fund. Receipts for the Division's State budget comes from manufactured housing licensing fees charged to manufacturers, dealers, set-up contractors and salespersons. The State budget also receives receipts from continuing education fees for manufactured housing salespersons and set-up contractors.

The Division also supplements its State Budget receipts by participating in a joint Federal/State manufactured housing monitoring program with a contract with the Institute for Building Technology and Safety (IBTS), a HUD Subcontractor. During 2003-2004, Division staff members spent approximately 700 hours in interstate monitoring inspections of manufacturing plant facilities and in reviewing construction plans for new manufactured homes.

The Manufactured Building Division also serves as staff to the North Carolina Building Code Council in the administration of the state's modular construction program. This includes receiving and resolving modular complaints and the certification and monitoring of residential and commercial modular manufacturers. Currently there are 122 certified manufacturers shipping modular buildings into North Carolina, with plant locations ranging from Florida to Arizona to Montana. The Division also certifies independent certification agencies (third party agencies) that review modular plans for compliance with the North Carolina State Building Code and monitors production in modular plants on continuing basis.

Manufactured Building Division Activities - Manufactured Housing

	2003	2004
Complaints Received	473	328
Inspections Completed	280	180
Manufacturers Licensed	74	61
Dealers Licensed	761	637
Set-up Contractors Licensed	535	445
Salespersons Licensed	2,333	1,861
Salespersons Temp. Licensed	815	565
Board Hearings Scheduled	13	6
Pre-Hearing Conferences Scheduled	175	82

Manufactured Building Division Activities - Modular Construction

	2003	2004
Complaints	59	91
Manufacturers	122	122
Third Party Certification Agencies	9	9
Modular Stamps	6970	8562

Risk Management Division

This Division is responsible for the operation and maintenance of the State Property Fire Insurance Fund (the Fund), the self-insurance plan for the State's property. The Fund provides insurance coverage for approximately 14,000 state-owned buildings as well as the contents in these buildings and approximately 1,360 leased locations with a combined value of $17.9 billion. Losses to the State's property are investigated and adjusted by this Division and are paid from the Fund with the approval of the Council of State. A total of 80 claims were paid from the Fund in 2004, totaling $1,552,392 and 95 claims were paid in 2003, totaling $1,006,790

The Fund provides basic fire and lightning insurance coverage for state-owned property and offers insurance for damages caused by wind, hail, aircraft or vehicles, riot or civil commotion, explosion, smoke, theft, sprinkler leakage, vandalism, flood, business interruption and "all risk." All General Fund facilities are insured for fire and lightning at no cost to the agency. Approximately 75 percent of the State's buildings receive this coverage free. Special Fund operations are billed for the fire and lightning coverage. This arrangement has saved the State millions of dollars, compared to buying commercial insurance.

When the Fund was established in 1945, the General Assembly recognized that loss prevention was an essential ingredient for a successful self-insurance program. The General Statutes require an annual fire and life safety inspection of all State-owned buildings by the division's inspectors who are certified in the interpretation of codes and standards for fire

protection and construction. Reports are made to agency managers for correction of deficiencies. The inspection staff also provides advice on corrective measures.

This Division inspects all new electrical systems in state-owned buildings to assure that these systems comply with the State Electrical Code. Also, technical expertise and Electrical Code consultation and interpretation is provided to local electrical inspectors, design engineers, contractors and the general public. The electrical staff conducted 5,216 inspections and responded to 8,907 telephone inquiries in 2004 and conducted 3,614 inspections and handled 8,346 inquiries in 2003. This Division also administers the third party accreditation program for the State which evaluates testing agencies that are approved to list and label components of building systems. In addition, this Division administers the School Maintenance Electricians Program which certifies that electricians responsible for electrical installations in school buildings have basic knowledge of electrical systems. The Risk Management Division provides and coordinates planning and presentation of educational programs on the State Electrical Code for the entire State.

The Risk Management Division serves as a resource for state agencies, universities and community colleges in resolving risk issues. This Division administers the State's automobile insurance program, which covers 36,845 vehicles. Also, various types of insurance coverages are procured for state agencies and universities from private insurance companies. These coverages include, but are not limited to, inland marine, ocean marine, aircraft liability and physical damage, boiler and machinery, workers compensation, medical malpractice, accident and health, general liability, crime, professional liability and bonds. This Division also assists local governments with their property and casualty insurance programs. Since 1986, 170 North Carolina communities and counties have received insurance surveys and risk management services.

The Division also provides staff, administration and research services to the Public Officers and Employees Liability Insurance Commission. The Commission is charged with making available a plan of professional liability coverage for all law enforcement officers, public officials and employees of any political subdivision of the state. The Commission also provides $5 million in liability coverage on all state employees for losses resulting in bodily injury or property damage and for errors and omissions in the performance of their jobs.

Fire and Rescue Commission

The Fire and Rescue Commission is an advisory board consisting of representatives from various fire and rescue organizations as well as state agencies. The Commission is responsible for developing voluntary certification programs and professional standards for all levels of fire and rescue personnel.

Presently, 10 certification programs and 20 levels of certification are active, including: Firefighter, Instructor, Rescue Technician, Fire and Life Safety Educator, Fire Apparatus

Driver/Operator, Emergency Vehicle Driver, Hazardous Materials Responder, Fire/Arson Investigator, Fire Officer and Airport Firefighter.

The Firefighter, Instructor, Hazardous Materials, Driver/Operator, Rescue Technician, Fire Officer, Fire and Life Safety Educator and Airport Firefighter programs are currently accredited by the International Fire Service Accreditation Congress, of which the Commission is an active member.

Each month the Commission receives approximately 300 applications for one of the above mentioned certifications. The Commission currently maintains over 60,000 certifications.

An ongoing project of the Commission is development and dissemination of the Occupational Safety and Health Standard for Fire Departments and Rescue Squads. This was a compilation of the applicable NFPA Standards and OSHA General Industry Standards.

New programs for the Commission include the Unified Command and Control and the Line-of-Duty-Death programs. These courses began in early 2003.

The goal of such programs is that they will provide additional professional recognition, as well as enhance the safety of emergency services personnel in North Carolina.

Volunteer Safety Workers Compensation Fund

The Fire and Rescue Commission continue to administer the Volunteer Safety Workers Comp Fund which was created by the General Assembly as a self-funded workers compensation program for non-municipal volunteer fire and rescue departments. Key Risk Corporation serves as TPA (third party administrator) of the funds, handling claims, billing and administration. The Commission appointed a nine member Board which oversees the administration of the fund and selects the TPA. In 2004, 1,317 fire and rescue departments had workers compensation coverage through the fund, covering a total of 42,264 workers.

Fire and Rescue Training and Inspection Division

This Division serves as the certifying agency for qualifying fire departments and their members for several benefit programs.

The primary responsibility of this group is the delivery of instructor upgrade and qualification courses. However, additional requirements extend to direct program deliveries, program development and participation on the State Emergency Response Team.

During the biennium, efforts were made to provide the best possible service for the Fire and Rescue Services in North Carolina. A constant review and update of all existing instructional programs is essential in providing the most current information and

techniques. Training delivery continued with an emphasis on instructor upgrade and qualification but has also provided for special school direct deliveries.

This section has participated in programs provided by the National Fire Academy and the Emergency Management Institute both on a federal and regional level. Personnel attended classes as well as received the train-the-trainer programs to be delivered to in-state instructors and responders. OSFM personnel have been appointed to and are currently serving on national committees with the responsibility of creating training standards and curriculum with organizations including the National Fire Protection Agency (NFPA), FARMEDIC and the Terrorism Task Force.

Another valuable function this section provides is with the assistance to fire departments and rescue squads in case of an in-line of duty death, a death in which a member dies while performing duties for his/her fire or rescue department. OSFM also assists their department, spouse and children in securing all the funds available to an in-line of duty death. OSFM was instrumental in getting federal legislation passed for covering events which now includes heart attack and stroke within 24 hours of a related emergency services incident.

This section also continues to attend in-state meetings and conventions and to serve on committees where requested. Some of the events which have been attended by our personnel include: the North Carolina State Firemen's Association and North Carolina Association of Fire Chief's annual conference, winter meeting of the Fire Chief's Association, North Carolina Association of Hazardous Materials Responders, State Hazardous Materials Advisory Board, North Carolina Society of Fire/Rescue Instructors, the North Carolina Association of Rescue and EMS annual conference, EMS Today, the North Carolina Association of County Commissioners, the North Carolina Fire College and many others.

INSPECTIONS DIVISION

Rating Classification

Rural Fire Districts		Municipal Fire Districts	
ISO Class	No. in N.C.	ISO Class	No. in N.C.
1	0	1	1
2	0	2	5
3	0	3	24
4	9	4	49
5	34	5	126
6	64	6	95
7	50	7	47
8	3	8	11
9S	800	9S	3
9E	231	9E	0

Fire Department Statistics

As of January 1, 2005	
Fire Departments in North Carolina	1,289
Municipal Fire Departments	243
Non-Profit Corporations	1,046
Fire Districts in North Carolina	1,552
Rural Fire Districts in North Carolina	1,191
Municipal Fire Districts	361
Municipal Fire Districts with ISO Class of 9S	3
Rural Fire Districts with ISO Rating Less than a Class 9S	160
Fire Districts with Split/Class Rating (ex. 6/9S)	388

The Department of Insurance has responsibility for conducting inspections of departments in areas with a population less than 100,000. These inspections serve to determine the rate classification for property insurance.

The inspection program is designed to help improve fire protection for the citizens of North Carolina and increase the safety of our state's firefighters. Oftentimes it results in lower property insurance rates. This section continues to assist local governments with fire district mapping, setting up tax districts, preparing fire departments for NCRRS surveys and by providing information on benefit programs. The section also serves as an information resource on rural fire protection for local government officials.

The Department also has duty of inspecting more than 1,000 volunteer fire departments in North Carolina. The results of these inspections are reported to the North Carolina Fire

Rate Bureau and are used by them in filing future rates for fire insurance costs. The fire departments are re-inspected on a two to three year cycle in order to maintain a current picture of the quality of fire protection in North Carolina and to assist the departments in making improvements.

These inspections ensure that the fire departments are maintaining the minimum rating requirements. Meeting these requirements provides for the eligibility of the department's personnel to participate in the Fireman's Pension Fund, in the Firemen's Death Benefit Act and in the Firemen's Relief Fund. Meeting these requirements also allows property owners living in the fire district to enjoy a lower fire insurance premium on their property insurance.

Fire Dept. Inspection Summary 2004

	State Total
Districts Inspected	276
Districts Meeting Requirements	254
Districts Not Meeting Requirements	22
Percentage Meeting Requirements	92%
Percentage Not Meeting Requirements	8%

Further duties of this section include providing fire protection information to local government officials, county fire marshals, local fire associations and citizens of North Carolina. Inspectors also assist with programs to fire departments and rescue squads on financing alternatives, record keeping, contract agreements, benefits and other administrative subjects.

RESEARCH AND PROGRAM DEVELOPMENT SECTION

The Research and Program Development section facilitates curriculum development and the related audio/visual materials for all fire and rescue training programs. In addition, this section designs and develops informational and educational materials for publication and distribution to the public. The *OSFM Fire & Rescue Journal* is published quarterly by the Research and Program Development group.

SIGNIFICANT ADVANCES

Computer Based Training (CBT) continues to be a high priority for disseminating OSFM's training programs. The concept of CBT, introduced two years ago into the OSFM training endeavor, is a more cost-effective way to deliver training. This new level of training allows the individual to learn at a pace conducive to personal schedules and needs. Also, since cognitive skills can be gained from CBT training without the need for an instructor, the expense of providing training is reduced.

The CBT concept actually offers two formats for presentations. While one method is to provide students with a self instructional tool, as mentioned above, the other is designed to be used by instructors to facilitate the delivery of a training program. The CBT presentation format provides some advantages over more conventional presentation software, such as MS PowerPoint. The software used by RPD is a multimedia software known as Authorware. The software allows a program to be written as an EXE file thus allowing it to be run on any computer without any additional software. The presentations are written in code and cannot be altered by anyone not having excess to the code design. This in-house control over the program design and its content gives more insurance that the program will be delivered in its entirety by instructors who choose to contract with a delivery agency to provide fire and rescue certification training.

RPD has also acquired the equipment and knowledge to produce and disseminate training programs on DVD-R. The DVD-R has a much higher capacity for data storage than CDs (more than four times the capacity). Video requires approximately 20 MB of storage space per one minute and audio requires approximately 10 MB per minute. This higher storage capacity has enabled the division to produce full-length training videos.

Project Report

Projects submitted between January 1 2004 and December 31 2004	**157**
Projects completed between January 1 2004 and December 31 2004:	**122**

Prevention, Programs and Grants Division

The Prevention, Programs and Grants Division administers the Firemen's Relief Fund and Rescue Relief Fund, as well as assists local fire, EMS, law enforcement and SAFE KIDS coalitions by providing resources on injury prevention programs statewide. Injury Prevention Specialists specialize in Child Passenger Safety, Risk Watch, Remembering When, and SAFE KIDS within their region of the state. NC SAFE KIDS focuses on reducing unintentional injuries to children 14 years of age and younger. Currently, there are 14 National Coalitions and 39 chapters in NC.

Funds

Working closely with the North Carolina Fireman's Association, division staff continues to improve collection and disbursement of the Firemen's Relief Fund. Significant effort has been made to reduce the number of fire departments disqualified due to ineligibility. The Rescue Relief Fund was created in 1987 to assist rescue personnel in need.

Total Firemen's Relief Fund tax collected for 2003 was $5,193,857.63 and a total of $4,905,006.43 was disbursed to fire departments meeting all General Statute requirements. Total Rescue Relief Fund tax collected for 2003 was $855,707,681 and a total of $735,908.60 was disbursed to the North Carolina Association of Rescue and EMS to distribute the funds according to General Statute 58-88-5. Total Rescue Relief Fund tax collected for 2004 was $889,010.78 and a total of $764,549.27 was disbursed to the North Carolina Association of Rescue and EMS to distribute the funds according to GS 58-88-5. The Department of Insurance was given the responsibility by the General Assembly to administer the Volunteer Fire Department Fund and the Volunteer Rescue/EMS Fund in 1988. The intent of these programs is to financially aid volunteer fire departments and rescue providers to purchase related equipment and to make capital expenditures, based on need.

The Volunteer Fire Department Fund matches on a dollar-for-dollar basis up to $20,000.
2003 funds collected for the Volunteer Fire Department Fund was $4,254,303.03.
2004 funds collected for the Volunteer Fire Department Fund was $4,539,547.12.

The Volunteer Rescue/EMS Fund will match on a dollar-for-dollar basis up to $15,000. The Volunteer Rescue/EMS Fund also allows rescue providers with liquid assets of less than $1,000 to apply for a $3,000 non-matching grant. Funds collected in 2003 for the Volunteer Rescue/EMS Fund was $1,334,468.41. Funds collected in 2004 for the Volunteer Rescue/EMS Fund was $1,570,525.58.

Approved monies for volunteer fire departments and volunteer rescue providers through the Volunteer Fire Department Fund and the Volunteer Rescue/EMS Fund since 1988 exceed $54,158,212.

The Volunteer Workers Compensation Fund was established by the General Assembly to provide low cost workers compensation insurance coverage to non-municipal volunteer fire departments, rescue squads and EMS departments. It was established as a self-funded program within the Department of Insurance. Each fire, rescue or EMS department pays $50 per individual for volunteers and $250 per individual for career personnel. The fund is supplemented each year by an appropriation from the General Assembly. Per requirements of the statutes, the fund is governed by the North Carolina Fire and Rescue Commission housed within the Department of Insurance. The Commission contracts with a third party administrator (TPA) to handle administration of the fund, as directed by statute. Currently Key Risk management services serves as the TPA.

Remembering When Overview

The Office of State Fire Marshal (OSFM) presents train-the-trainer sessions on the National Fire Prevention Association's fall and burn prevention series called Remembering When. A nostalgic trivia game is the hook that entices senior citizen audiences to learn how to

prevent falls and burns, common injuries among the state's older citizens. A grant (in the amount of $10,000) from NCIAI has assisted with continuing the program in 2004.

Juvenile Fire Setters

OSFM created the North Carolina Counsel for the Prevention of Juvenile Fire Setters which later was dissolved due to several circumstances. JFS is in the rebuilding stage through grants provided by NASFM and NCIAI. These grants included coalition training as well as National Fire Academy courses on Juvenile Fire Setter Intervention Specialist I. The purpose of the local coalitions is to address the serious concern of the growing rate of juvenile fire setting in North Carolina.

Risk Watch

Risk Watch is a comprehensive injury prevention curriculum for children in preschool through Grade 8. The program is taught in the classroom by teachers with support from community resources. Students act out learning activities by assuming character roles appropriate to their development stage. The program covers the eight safety areas that affect children the most with injuries and deaths. These safety areas include: motor vehicle; fire and burn; choking, suffocation, and strangulation; poisoning; falls; firearms injury; bike and pedestrian; and water. North Carolina has developed a model Risk Watch program that focuses on teacher training and accountability. This program is active in Nash, New Hanover, Cleveland, Davie, Watauga and Wilson Counties funded in part by the Governor's Highway Safety Program, NCIAI and the Duke Endowment. North Carolina Risk Watch is recognized statewide and nationwide as a leader in new techniques and fund-raising.

NC SAFE KIDS Buckle Up

NC SAFE KIDS Buckle Up is the child passenger safety component of NC SAFE KIDS. Local fire, EMS and rescue serve as primary and secondary contacts to work to increase awareness of child passenger safety issues. There are currently 81 SKBU communities participating statewide.

Bucklebear

Bucklebear is an educational tool for children aged 3-8 year old. Train-the-trainer courses are offered to local injury prevention partners for use at the local level. The bears include educational materials concentrating on child passenger, bike, trike and pedestrian safety. Funding is provided through the Governor's Highway Safety program.

NC SAFE KIDS

NC State SAFE KIDS works as a resource to local SAFE KIDS chapters to address unintentional injuries to children 14 and under. Currently, there are 14 National Coalitions and 39 chapters of NCSK. The chapters apply for grant funding through NCSK and participate in activities including bike rodeos, car seat clinics and pedestrian safety. In addition, special events are focused on Child Passenger Safety Week and SAFE KIDS

Week. Last year, water safety was the injury area selected. In 2004, the current NC Child Restraint Law was expanded to include all children under 8 years of age or 80 pounds. This was an improvement from the prior law which effected children 5 years of age or 40 pounds. NCSK participated in a Booster Blitz that distributed 150,000 booster awareness flyers to local vendors.

North Carolina Code Officials Qualification Board

The board is organized under the provisions of Chapter 143, Article 9C of the North Carolina General Statutes. A list of members follows, along with the individual or organization by whom they were appointed.

MEMBERS OF THE NC CODE OFFICIALS QUALIFICATION BOARD

Ronnie Bailey
Asst. Professor, Architectural Engineering
North Carolina A&T University
Greensboro, NC 27411 336-334-7575

Tim Bradley - Secretary
Sr. Deputy Commissioner, NC Dept. of Insurance
P. O. Box 26387
Raleigh, NC 27611 919-661-5880

Richard D. Ducker
Institute of Government
CB# 3330 Knapp Building UNC
Chapel Hill, NC 27599 919-966-5381

Charles England
England Contractors
Route 5 Box 126
Marion, NC 28752 828-738-4067

Mark H. Hicks
Mark Hicks Builder, Inc.
221 Hillsboro Street
Oxford, NC 27565 919-693-1866

Charles R. Horne
Chatham County Manager
P. O. Box 87
Pittsboro, NC 27312 919-542-8200

James D. Kennedy, Jr. - Chairman
Senior Electrical Inspector
100 Liberty Walk/Nations Bank Plaza
Winston-Salem, NC 27101 336-727-2365

Hayden Lutterloh, III
Assistant Fire Chief
P. O. Box 3729
Sanford, NC 27331

Joseph E. Martin
City of Sanford Alderman
549 Summit Drive
Sanford, NC 27330 919-776-6022

Barry Mowbray
Town of Wrightsville Beach Alderman
13 East Atlanta Street
Wrightsville Beach, NC 28480

Robert M. Pittman
Program Coordinator
Dept. of Community Colleges
Raleigh, NC 27611 919-733-7051

William Rakatansky, AIA
Freeman White
21136 Norman Shores Drive
Cornelius, NC 28031 704-586-2419

Deborah Simpson - Vice-Chairman
Asst. Director Cumberland Co. Inspection Dept.
P.O. Drawer 1829
Fayetteville, NC 28302 910-483-0113

Sam Vaughan, III
Vaughan Electric, Inc.
P. O. Box 11677
Durham, NC 27703 919-596-1327

Edwin C. Weaver, PE
Civil Engineering Dept.
NC State University
Raleigh, NC 27695-7908 919-515-7430

North Carolina Building Code Council

NC General Statutes 143-138 authorize the N.C. Building Code Council to prepare, adopt and amend the State Building Code. The council consists of 17 members appointed by the governor for six-year terms. Statutes require that members have expertise in areas relating to construction safety. The council meets twice a year in June and December.

Members

CHAIRMAN
Dan Tingen - 05
(Home Builder)
Tingen Construction Company

J. Albert Bass Jr., PE - 09
(Mechanical Engineer)

Alan W. Perdue - 09
(Fire Services)
Guilford County Emergency Services

Bradley C. Lail – 05
(Public Representative)

Lon M. Culbertson, PE – 07
(Electrical Engineer)
InfraTrek Consultants, PC

Terry B. Greene – 07
(Gas Industry)
Piedmont Natural Gas Co.

Robert F. Ruffner, Jr. - 09
(General Contractor)
Clancy & Theys Construction Company

Walter L. Simmons – 09
(Building Inspector)
City of Greensboro

Mack E. Nixon – 09
(County-Gov't Rep)
Albemarle Home Builders

VICE CHAIRMAN
John Llewellyn Hitch, AIA - 04
(Architect)
The Smith Sinnett Associates, P.A.

Jack F. Neel, PE - 04
(Municipal-Gov't Rep)

Thomas L. Avery, PE - 09
(Structural Engineer)
Structural Systems Inc.

Marshall Knight, Jr. -04
(Coastal Residential Contractor)

Barry James Maness – 07
(Mechanical Contractor)
Tarheel Contracting Co. Inc.

Gordon Timothy Reynolds – 07
(Electrical Contractor)
G T Reynolds Construction

Thomas P. Turner, FAIA - 04
(Architect)
ADEP, P.A.

Dan Murray, P.E. – 05
(State Agency)
Division of State Construction

North Carolina Fire and Rescue Commission

The North Carolina Fire and Rescue Commission is charged with developing certification standards for all levels of fire service and rescue personnel and coordinating the state's involvement with the Federal Emergency Management Agency and the U.S. Fire Administration.

The commission is also responsible for developing a master plan for fire prevention and control, increasing professional skills of fire protection and fire fighting personnel, serving as a central clearinghouse of information relating to the state's fire service activities, and handling federal and state grants.

Member Organization

MEMBER	REPRESENTING:
C. Harley Cook, Chair	NC Society of Fire Rescue Instructors
Robert Griffin, Vice Chair	NC Firemen's Association
Doug Lowe	NC Association of Rescue and EMS, Inc.
Robert Poe	NC Association of Rescue and EMS, Inc
Ken Dilday	NC Firemen's Association
Donald Whitaker	NC Association of Fire Chiefs
Chuck Gallyon	NC Fire Marshal's Association
H. T. "Tom" Taylor	NC Association of County Commissioners
Walter M. Gardner, Jr.	NC League of Municipalities
Cloyce Anders	Public-at-Large
Marvin O. Wilson	Speaker of House Appointee
Billy Winn	President of the Senate Appointee
Brynn Thomas	Governor's Appointee
Ed Duffield	Professional Firefighters and Paramedics of NC
Mike Tapp	County Fire Marshal's Association

North Carolina Home Inspectors Licensure Board

NC General Statutes 143-151.43 Article 9F created the North Carolina Home Inspectors Licensure Board to license those who perform home inspections for compensation. A list of the eight members follows, along with the individual by whom they were appointed.

Members

Jeff Vaughn Chairman Coastal Home Inspections P. O. Box 628 New Bern, NC 28563 (252) 637-4081 (252) 633-4589 Fax	**W. Robert Schultz** Vice Chairman First South Bank 2904 Dunkirk Drive Raleigh, NC 27613 (919) 848-6007
Gerald W. Canipe Treasurer ARCHISPEC 4200 Morganton Road, Suite 200-03 Fayetteville, NC 28314 (910) 868-3086 (910) 868-7184 Fax	**Wanda Edwards, PE** Secretary N. C. Department of Insurance 322 Chapanoke Road, Suite 200 Raleigh, NC 27603 (919) 661-5880 ext. 255 (919) 662-4414 Fax
John W. Hamrick Coldwell Banker Ward & Misenheimer 6224 Fayetteville Road Suite 101 Durham, NC 27713 (919) 536-0046 (919) 361-9960 Fax	**David G. Jones** Expert Inspection Service, Inc. 1027 Beaver Dam Rd. Chapel Hill, NC 27517 (919) 933-6842 (919) 933-8928 Fax
James Liles 11504 Black Horse Run Raleigh, NC 27613 (919) 847-9993 (919) 847-9993 Fax	**T. Larry Summer** Summer Construction Co. 300 W. Main Street, Suite C Cherryville, NC 28021 (704) 435-4909 (704) 435-1219 Fax

North Carolina Manufactured Housing Board

The Board is empowered to issue and revoke licenses, require bonds, resolve complaints and promulgate rules as necessary to carry out these goals. The following is a list of members and the individual or industry they represent as of January 2005.

Members

Chairman: James E. Long

Insurance Commissioner
1202 Mail Service Center
Raleigh, NC 27699-1202

Designated Chairman: Tim Bradley

Senior Deputy Insurance Commissioner
1202 Mail Service Center
Raleigh, NC 27699-1202

Insurance Commissioner Appointees		
Representing - Public	Ms. Linda Willey PO Box 232 Manteo, NC 27954	Term (2nd): 10-01-02 to 09-30-05
Representing - Public	Ms. Lynn S. Carlson 7265 Schooner Court, B-2 Ocean Isle Beach, NC 28469 910-575-3255	Term - (Completing Vacant Term) 10-01-02 - 09-30-05
Governor Appointees		
Representing - Manufacturer	Mr. Dennis L. Jones R-Anell Housing Group P.O. Box 428 Denver, NC 28037 704-483-5511	Term (1st): 10-01-02 to 09-30-005
Representing - Dealer	Mr. Wesley Layton Layton Sales 4431 Sunset Ave. Rocky Mount, NC 27804 252-443-1121 252-443-1122(Fax)	Term (2nd): 10-01-02 to 09-30-05
Speaker Appointees		
Representing - Finance	Mr. Danny Chandler Affordable Funding, Inc. 5711 Six Forks Rd, Ste. 201 Raleigh, NC 27609 919-518-1432	Term (2nd): 10-01-03 to 09-30-06
Representing - Insurance	Mr. Clark E. Crowther American Modern Ins. Group 3317 Fielding Ave. Charlotte, NC 28211 704-365-5524	Term (2nd): 10-01-03 to 09-30-06
President Pro Tem of Senate Appointees		
Representing - Supplier	Mr. Larry Garner Holiday Comfort Heating & Air 5200 Robinwood Drive. Charlotte, NC 27215 704-536-3586 704-536-3597(Fax)	Term (1st): 10-01-04 to 09-30-07
Representing - Set-Up Contractor	Mr. Johnnie Burgess 1177 Freedom Way. Hubert, NC 28539 910-353-6612 910-353-6619(Fax)	Term (1st): 10-01-04 to 09-30-07

Public Officers and Employees Liability Insurance Commission

The Commission is given authority under North Carolina General Statutes 58-31-25 and 58-32-1 through 58-32-30 to make available a plan of professional liability insurance coverage for all law enforcement officers, public officials, and employees of any political subdivision of the State. The Public Officers and Employees Liability Insurance Commission (POELIC) is empowered to negotiate with insurance companies for the most favorable rates and coverage.

The commission also serves as liaison between the companies and those insured, to resolve any issues which may arise. The commission consists of 11 members representing city, county, and state governments, sheriffs and police departments, and the insurance industry. It meets at least four times each year, on or about the 15th of January, April, July and October. Following is a list of the members:

NC ASSN. OF COUNTY COMMISSIONERS Insurance Manager Term Expires: 6-30-2007	**Mrs. Susan Klakoff**
NC LEAGUE OF MUNICIPALITIES NCLM - Risk Management Services Term Expires: 6-30-2007	**Mr. Robert G. Haynes**
NC SHERIFFS ASSOCIATION Wilkes County Sheriff Term Expires: 6-30-2007	**Sheriff Dane Mastin**
NC POLICE CHIEFS AND NC POLICE EXECUTIVES ASSN. Greensboro Police Dept. Term Expires: 6-30-2004	**Sergeant Matthew Lojko**
INDEPENDENT INSURANCE AGENTS OF NC Insurance Center of NC Term Expires: 6-30-2007	**Mr. Bob Mays**
INDEPENDENT INSURANCE AGENTS OF NC Snipes Insurance Service Term Expires: 6-30-2004	**Mr. J. Dal Snipes**
SPEAKER OF THE HOUSE **CHAIRMAN** Term Expires: 6-30-2007	**Mr. Joseph R. Kluttz, CPCU**
PRESIDENT PRO TEMPORE Term Expires: 6-30-2007	**Mr. David Walker**

****** EX OFFICIO MEMBERS ******

COMMISSIONER OF INSURANCE	**Mr. J. Thomas Sutton, III**
ATTORNEY GENERAL'S OFFICE Dept. of Justice	**Mr. Robert T. Hargett**
CRIME CONTROL & PUBLIC SAFETY	**Mr. William A. Dudley**

§3.340 Total and permanent total ratings and unemployability.

(a) *Total disability ratings*:

(1) *General.* Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Total disability may or may not be permanent. Total ratings will not be assigned, generally, for temporary exacerbations or acute infectious diseases except where specifically prescribed by the schedule.

(2) *Schedule for rating disabilities.* Total ratings are authorized for any disability or combination of disabilities for which the Schedule for Rating Disabilities prescribes a 100 percent evaluation or, with less disability, where the requirements of paragraph 16, page 5 of the rating schedule are present or where, in pension cases, the requirements of paragraph 17, page 5 of the schedule are met.

(3) *Ratings of total disability on history.* In the case of disabilities which have undergone some recent improvement, a rating of total disability may be made, provided:

(i) That the disability must in the past have been of sufficient severity to warrant a total disability rating;

(ii) That it must have required extended, continuous, or intermittent hospitalization, or have produced total industrial incapacity for at least 1 year, or be subject to recurring, severe, frequent, or prolonged exacerbations; and

(iii) That it must be the opinion of the rating agency that despite the recent improvement of the physical condition, the veteran will be unable to effect an adjustment into a substantially gainful occupation. Due consideration will be given to the frequency and duration of totally incapacitating exacerbations since incurrence of the original disease or injury, and to periods of hospitalization for treatment in determining whether the average person could have reestablished himself or herself in a substantially gainful occupation.

(b) *Permanent total disability.* Permanence of total disability will be taken to exist when such impairment is reasonably certain to continue throughout the life of the disabled person. The permanent loss or loss of use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or bedridden constitutes permanent total disability. Diseases and injuries of long standing which are actually totally incapacitating will be regarded as permanently and totally disabling when the probability of permanent improvement under treatment is remote. Permanent total disability ratings may not be granted as a result of any incapacity from acute infectious disease, accident, or injury, unless there is present one of the recognized combinations or permanent loss of use of extremities or sight, or the person is in the strict sense permanently helpless or bedridden, or when it is reasonably certain that a subsidence of the acute or temporary symptoms will be followed by irreducible totality of disability by way of residuals. The age of the disabled person may be considered in determining permanence.

(c) *Insurance ratings. A* rating of permanent and total disability for insurance purposes will have no effect on ratings for compensation or pension.

[26 FR 1585, Feb. 24 1961, as amended at 46 FR 47541, Sept. 29, 1981]

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Joe Stewart	IFNC
Kevin Mills	Senator Purcell's office
Tripp Melton	Sen. Stevens office
R. Paul Wilms	NCHBA
Tom Vitaglione	NC CHILD ADVOCACY INST.
Steve Shone	NC Pediatric Society
BRIAN LEWIS	Covenant w/ NC's children
Marcus Mendenhall	Poyner & Spruill
Gary Salamido	GSK
Mark Jarvis	GSK

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
John Goodman	Alley Associates
Kaye Gattis	NC State Ports Authority
Mark Benson	Capitol Chomp
Joyce Peters	NCDOC
Brad Lovin	NC Manufactured Housing Institute
Lee Hodge	NCCH
Lee Sollis	Rep Cole's office
Elizabeth Dalton	NCCBI
David Barnes	Poyner + Spruill LLP
Mike Mahin	NCBAA
Dale Carroll	Advantage West

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
BILL HALE	JORDAN PRICE LAW FIRM
Jim Long	NCDOT
Frank W Folger	NCDOT
Courtney A Crowder	NC DOT
Barbara M. Burke	NC DOT
Cam Cowell	BPMHL
Susan Valauri	Nationwide
Tom Taylor	NCAHP
Tom Regan	NMRS
Jim Mercer	NCAEC
Amy Hobbs	Hobbs & Co

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
John Peters	NCEDA
Betty Huskins	Advantage West
Rick Carlton	BMy.
Mike Carey	Carey & Associates
Gary Harris	NCPMA
Matt Arbury	NCSA

Senate Commerce Committee
Thursday, March 24, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 685	Revise Professional Employer Organization Act.	Senator Bingham

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, March 24, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 24, 2005, in Room 1027 of the Legislative Building. Fourteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Britney Cherry from Raleigh, sponsored by Senator Richard Stevens; and Ariel Cochrane-Brown from Raleigh, also sponsored by Senator Stevens.

Senator Soles then recognized Senator Tony Rand to explain Senate Bill 685, Revise Professional Employer Organization Act. Senator Rand moved the adoption of a committee substitute for the purpose of discussion. The motion carried. Senator Rand explained the committee substitute. Senator Bingham, primary sponsor of the bill, made some additional comments, including the time sensitive nature of the legislation.

Mr. Frank Folger, Counsel to the Department of Insurance, spoke of several changes the Department would like to see in the bill. He asked that action be postponed so the Department could continue working with Mr. Ed Turlington, who is representing the national trade association for professional employer organizations, to address issues the bill raises. He affirmed that the Department would not prosecute any of the organizations even though they had not complied with the current law. Mr. Turlington commented that the organizations want to work on meeting the concerns of the Department, but also felt it was important to be in compliance with the law. Since the bill will require referral to the Appropriations/Base Budget Committee and will need to be considered by the House, Mr. Turlington asked the committee to vote on the bill and move it to its next steps as talks between the Department and the trade association continue. Senator Walter Dalton moved for a favorable report of the committee substitute and that it be re-referred to the Appropriations/Base Budget Committee. The motion carried.

The meeting adjourned at 11:40 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, March 24, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **685** Revise Professional Employer Organization Act.

Draft Number:	PCS 75274
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 685

Short Title:	Revise Professional Employer Organization Act.	(Public)
Sponsors:	Senators Bingham, Rand; Forrester, Garwood, Stevens, and Swindell.	
Referred to:	Commerce.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER CERTAIN CIRCUMSTANCES, DECREASING THE FEE FOR LIMITED LICENSES, ESTABLISHING THE REQUIREMENTS FOR LIMITED LICENSES, REQUIRING THE COMMISSIONER OF INSURANCE TO ADOPT RULES FOR ALTERNATIVE LICENSES, PROVIDING THAT APPLICANTS FOR LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR ORGANIZATIONS APPLYING FOR LICENSURE PRIOR TO MARCH 31, 2006, CHANGING THE EFFECTIVE DATE FOR LICENSURE OF PROFESSIONAL EMPLOYER ORGANIZATIONS TO JULY 1, 2005, PROVIDING A TRANSITION PERIOD FOR ORGANIZATIONS REGISTERING UNDER ARTICLE 89 OF CHAPTER 58 OF THE GENERAL STATUTES, AND AUTHORIZING THE USE OF FUNDS FROM THE INSURANCE REGULATORY FUND FOR REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50 reads as rewritten:

"**§ 58-89A-50. Surety bond; letter of credit.**

(a) An applicant for licensure shall file with the Commissioner a surety bond in the amount of one hundred thousand dollars ($100,000) in favor of the State of North Carolina.

(b) The surety bond required by this section shall be in a form acceptable to the Commissioner, issued by an insurer authorized by the Commissioner to write surety

business in this State, and maintained in force while the license remains in effect or any obligations or liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond ~~that~~ meets the requirements of this ~~section if~~ section, and (iii) 90 days' advance written notice is provided to the Commissioner.

(d) A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.

(e) Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the Commissioner in writing at least 45 days before cancellation or nonrenewal.

(e1) A surety bond may be cancelled by the issuer of the bond with respect to future obligations or liabilities upon proper notice pursuant to this section and without regard to approval or acceptance of the Commissioner.

(f) In lieu of the surety bond required by this section, an applicant may submit to the Commissioner an irrevocable letter of credit in a form acceptable to the Commissioner issued by a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or may maintain on deposit with the Commissioner an amount equal to the amount required under subsection (a) of this section in cash or in value of securities of the kind specified in G.S. 58-5-20 and subject to the same conditions as the surety bond.

(g) This section does not apply to persons who are licensed pursuant to the alternative licensing procedures set forth in G.S. 58-89A-76."

SECTION 2. G.S. 58-89A-65 reads as rewritten:

"**§ 58-89A-65. Fees.**

(a) Each applicant for a professional employer organization license ~~or limited professional employer organization license~~ shall pay to the Commissioner, before the issuance of the license, a nonrefundable application fee of one thousand dollars ($1,000).

(b) Each licensee shall pay to the Commissioner when filing the information required under G.S. 58-89A-70(d) an annual filing fee of one thousand dollars ($1,000).

(c) Each applicant for (i) alternative licensing under ~~G.S. 58-89A-76 and each applicant for~~ G.S. 58-89A-76, (ii) renewal of a ~~license provided under G.S. 58-89A-76~~ license, or (iii) a limited professional employer organization license shall pay to the Commissioner, before issuance or renewal of the license, a fee of five hundred dollars ($500.00).

(d) When the Commissioner finds that a licensee has committed an act that is a ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes final following the conclusion of all administrative or judicial proceedings, the Commissioner may charge an applicant or licensee reasonable fees to recover the

Department's costs associated with investigations, inspections, examinations, and any other administrative or enforcement responsibilities created under this Article.

(e) Fees collected by the Commissioner under this Article shall be deposited in the Insurance Regulatory Fund under G.S. 58-6-25 and shall be used to implement this Article."

SECTION 3. G.S. 58-89A-75 reads as rewritten:

"**§ 58-89A-75. Limited license.**

The ~~Commissioner, by rule,~~ Commissioner shall provide for the issuance of a limited license to a person who seeks to offer limited professional employer services in this State. A person shall satisfy the requirements for a limited license if the professional employer organization:

(1) Does not maintain a physical professional employer organization office located in this State;

(2) Does not employ salespersons who reside or direct their sales activities in this State;

(3) Does not employ more than 50 covered employees in this State;

(4) Does not advertise through any media outlet physically located in this State; and

(5) Is a licensed or registered professional employer organization in at least one other state of the United States."

SECTION 4. G.S. 58-89A-76 reads as rewritten:

"**§ 58-89A-76. Alternative licensing.**

The ~~Commissioner, by rule, may~~ Commissioner shall provide for the acceptance of an affidavit by a bonded, independent, and qualified assurance organization that has been approved by the Commissioner certifying the qualifications of a professional employer organization for licensing under this Article in lieu of the requirements of G.S. 58-89A-40 through G.S. 58-89A-60. A professional employer organization licensed under this section shall be exempt from the provisions of G.S. 58-89A-70(c), (d), and (e)."

SECTION 5. G.S. 58-89A-110(d) reads as rewritten:

"(d) A license shall not be issued to any professional employer organization unless (i) the organization first files with the Commissioner evidence of workers' compensation coverage for all assigned employees in this State, including those leased from or coemployed with another ~~person, and that the premium paid by the licensee is~~ person, and (ii) the organization certifies to the Commissioner that it has provided its workers' compensation carrier with proper and necessary documentation to allow the carrier to determine and charge a premium that is commensurate with exposure and anticipated claim experience for all employees covered under policies issued by the carrier in the name of the licensee."

SECTION 6. For any initial application for a license pursuant to G.S. 58-89A-60 that is received by the Commissioner of Insurance prior to March 31, 2006, the Commissioner shall accept a GAAP financial statement that has been prepared within the previous 180 days and that covers a fiscal year that ended December 31, 2004, or later.

SECTION 7. Section 2 of S.L. 2004-162 reads as rewritten:

"**SECTION 2.** The Department of Insurance shall report to the ~~2005~~ 2007 General Assembly on the implementation, administration, and enforcement of Article 89 of Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce Article 89 of Chapter 58 of the General Statutes."

SECTION 8. Section 3 of S.L. 2004-162 reads as rewritten:

"**SECTION 3.** A person registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on the last day prior to the effective date of this act and a person who applies for and receives a registration pursuant to G.S. 58-89-15 prior to September 30, 2005, may continue to operate pending approval of the person's application for a license as long as the application is filed with the Commissioner no later than ~~April 1, 2005.~~ October 1, 2005. If the application for licensure is denied, the person shall cease offering professional employer services in this State. A person not registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective date of this act~~ October 1, 2005, shall not engage in or offer professional employer services in this State until the person has been issued a license under this act.

The Department shall continue to accept applications for registration and shall continue to issue registrations for professional employer organizations pursuant to G.S. 58-89-15, which shall be valid through September 30, 2005."

SECTION 9. Effective January 1, 2005, Section 5 of S.L. 2004-162 reads as rewritten:

"**SECTION 5.** This act becomes effective ~~January 1, 2005,~~ July 1, 2005, and applies to any contracts entered into, any business conducted, and any actions taken on or after that date. Article 89 of Chapter 58 of the General Statues shall continue in effect until July 1, 2005."

SECTION 10. G.S. 58-6-25(d) is amended by adding a new subdivision to read:

"(9) Money appropriated to the Department of Insurance for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes."

SECTION 11. Effective July 1, 2005, there is appropriated from the Insurance Regulatory Fund established in G.S. 58-6-25 to the Department of Insurance the sum of one hundred fifty thousand dollars ($150,000) for the 2005-2006 fiscal year for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes.

SECTION 12. Except as otherwise expressly provided in this act, this act is effective when it becomes law.

SENATE BILL 685:
Revise Professional Employer Organization Act

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senators Bingham and Rand
Date:	March 23, 2005	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

BACKGROUND: Article 89A of Chapter 58 of the General Statutes, *the North Carolina Professional Employer Organization Act*, was passed by the General Assembly in 2002 to require registration of professional employer organizations (PEOs) in the State. The Act was amended in 2004 to require PEOs to be licensed by the Department of Insurance, in addition to the Act's registration requirements.

A "professional employer organization" is defined in Article 89A as "a person that offers professional employer services." Typically, PEOs contract with businesses to provide human resource, employee benefit, payroll and workers compensation functions for the business. Under existing law, PEOs doing business in the State are required to file completed license applications by April 1, 2005. A violation of the Act is punishable by civil penalties and conviction of a Class H felony.

SUMMARY: Current law requires an applicant for licensure to file with the Commissioner of Insurance a surety bond in the amount of $100,000. **Section 1** of the bill amends this law to allow the issuer of the bond to cancel the bond, but only with respect to future obligations or liabilities under the bond. Likewise, a bond may be exchanged or replaced, but only if the new surety bond applies to obligations arising during the period of the original bond.

Section 2 of the bill reduces the fee for a limited professional employer organization license from $1,000 to $500. Current law authorizes the Commissioner of Insurance to provide for a limited PEO license by rule.

Section 3 of the bill establishes standards for the issuance of a limited license. To qualify for a limited license, the PEO must:

- Not maintain a physical professional employer organization office in the State.
- Not employ salespersons who reside or direct sales activities in the State.
- Not employ more than 50 covered employees in the State.
- Not advertise through any media outlet physically located in the State.
- Be a licensed or registered PEO in at least one other state.

This section also eliminates the requirement that the Commissioner provide for a limited license **by rule** and, instead, gives the Commissioner general authority to provide for a limited license.

Section 4 of the bill eliminates the requirement that the Commissioner provide for alternative licensing **by rule** and, instead, gives the Commissioner general authority to provide for this type of licensing.

Under current law, alternative licensing authorizes the Commissioner to accept an affidavit from a bonded, independent, and qualified assurance organization approved by the Commissioner certifying the qualifications of a PEO for licensing and exempts the PEO from license application requirements.

Section 5 clarifies G.S. 58-89A-110(d) to require a PEO to certify to the Commissioner that it has provided its workers compensation carrier with all proper and necessary documentation for the carrier to determine and charge a premium commensurate with anticipated claim experience.

Section 6 provides that for initial license applications received prior to March 31, 2006, the Commissioner must accept a GAAP financial statement prepared within the previous 180 days. The statement must cover a fiscal year ending December 31, 2004 or later.

Section 7 changes existing reporting requirements on the implementation, administration and enforcement of the Act to require the Department to report to the 2007 General Assembly instead of the 2005 Session.

Section 8 allows PEOs until September 30, 2005 to register under the Act and moves the deadline to file an application for licensing to October 1, 2005. Current law requires an application to be filed no later than April 1, 2005.

Section 9 changes the effective date of the Act from January 1, 2005 to July 1, 2005.

Section 10 provides that money from the Insurance Regulatory Fund may be used to reimburse the General Fund for money appropriated to the Department for regulation of PEOs. **Section 11** of the bill appropriates for the regulation of PEOs $150,000 to the Department from the Insurance Regulatory Fund for the 2005-2006 fiscal year.

EFFECTIVE DATE: Senate Bill 685 would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 685
PROPOSED COMMITTEE SUBSTITUTE S685-CSRG-3 [v.2]

3/24/2005 10:15:25 AM

Short Title: Revise Professional Employer Organization Act. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER CERTAIN CIRCUMSTANCES, DECREASING THE FEE FOR LIMITED LICENSES, ESTABLISHING THE REQUIREMENTS FOR LIMITED LICENSES, REQUIRING THE COMMISSIONER OF INSURANCE TO PROVIDE FOR ALTERNATIVE LICENSES, PROVIDING THAT APPLICANTS FOR LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR ORGANIZATIONS APPLYING FOR LICENSURE ON OR BEFORE JUNE 30, 2005, CHANGING THE EFFECTIVE DATE FOR LICENSURE OF PROFESSIONAL EMPLOYER ORGANIZATIONS TO JULY 1, 2005, PROVIDING A TRANSITION PERIOD FOR ORGANIZATIONS REGISTERING UNDER ARTICLE 89 OF CHAPTER 58 OF THE GENERAL STATUTES, AND AUTHORIZING THE USE OF FUNDS FROM THE INSURANCE REGULATORY FUND FOR REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50 reads as rewritten:

"**§ 58-89A-50. Surety bond; letter of credit.**

(a) An applicant for licensure shall file with the Commissioner a surety bond in the amount of one hundred thousand dollars ($100,000) in favor of the State of North Carolina.

(b) The surety bond required by this section shall be in a form acceptable to the Commissioner, issued by an insurer authorized by the Commissioner to write surety business in this State, and maintained in force while the license remains in effect or any obligations or liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond ~~that~~ meets the requirements of this ~~section if~~ section, and (iii) 90 days' advance written notice is provided to the Commissioner.

(d) A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.

(e) Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the Commissioner in writing at least 45 days before cancellation or nonrenewal.

(e1) A surety bond may be cancelled by the issuer of the bond with respect to future obligations or liabilities upon proper notice pursuant to this section and without regard to approval or acceptance of the Commissioner.

(f) In lieu of the surety bond required by this section, an applicant may submit to the Commissioner an irrevocable letter of credit in a form acceptable to the Commissioner issued by a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or may maintain on deposit with the Commissioner an amount equal to the amount required under subsection (a) of this section in cash or in value of securities of the kind specified in G.S. 58-5-20 and subject to the same conditions as the surety bond.

(g) This section does not apply to persons who are licensed pursuant to the alternative licensing procedures set forth in ~~G.S. 58-89A-76.~~ G.S. 58-89A-76 or to persons who are limited licensees pursuant to G.S. 58-89A-75.

(h) The license of any licensee that fails to provide and maintain a surety bond, letter of credit, cash, or securities pursuant to this section shall be subject to immediate suspension." Suspension by license

SECTION 2. G.S. 58-89A-65 reads as rewritten:

"**§ 58-89A-65. Fees.**

(a) Each applicant for a professional employer organization license ~~or limited professional employer organization license~~ shall pay to the Commissioner, before the issuance of the license, a nonrefundable application fee of one thousand dollars ($1,000).

(b) Each licensee shall pay to the Commissioner when filing the information required under G.S. 58-89A-70(d) an annual filing fee of one thousand dollars ($1,000).

(c) Each applicant for (i) alternative licensing under ~~G.S. 58-89A-76 and each applicant for~~ G.S. 58-89A-76, (ii) renewal of a ~~license provided under G.S. 58-89A-76~~ license, or (iii) a limited professional employer organization license shall pay to the Commissioner, before issuance or renewal of the license, a fee of five hundred dollars ($500.00). Refund

(d) When the Commissioner finds that a licensee has committed an act that is a ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes final following the conclusion of all administrative or judicial proceedings, the Commissioner may charge an applicant or licensee reasonable fees to recover the Department's costs associated with investigations, inspections, examinations, and any other administrative or enforcement responsibilities created under this Article.

(e) Fees collected by the Commissioner under this Article shall be deposited in the Insurance Regulatory Fund under G.S. 58-6-25 and shall be used to implement this Article."

SECTION 3. G.S. 58-89A-75 reads as rewritten:

"**§ 58-89A-75. Limited license.**

The ~~Commissioner, by rule,~~ Commissioner shall provide for the issuance of a limited license to a person who seeks to offer limited professional employer services in this State. A person shall satisfy the requirements for a limited license if the professional employer organization:

(1) Does not maintain a physical professional employer organization office located in this State;

(2) Does not employ salespersons who reside or direct their sales activities in this State;

(3) Does not employ more than 50 covered employees in this State;

(4) Does not advertise through any media outlet physically located in this State; and

(5) Is a licensed or registered professional employer organization in at least one other state of the United States.

A professional employer organization operating under a limited license shall be subject to all of the responsibilities and authorities of a licensee under this Article except for G.S. 58-89A-50, G.S. 58-89A-60 and G.S. 58-89A-70(c), (d), and (e). The Commissioner may require an application for limited license requiring sufficient information to verify the provisions of this section. For the purposes of this section, employees shall include the employees in this State of any professional employer organization under the applicant's common control as defined in G.S. 58-89A-5(5)."

SECTION 4. G.S. 58-89A-76 reads as rewritten:

"**§ 58-89A-76. Alternative licensing.**

The ~~Commissioner, by rule, may~~ Commissioner shall provide for the acceptance of an affidavit by a bonded, independent, and qualified assurance organization that has been approved by the Commissioner certifying the qualifications of a professional employer organization for licensing under this Article in lieu of the requirements of G.S. 58-89A-40 through G.S. 58-89A-60. A professional employer organization licensed under this section shall be exempt from the provisions of G.S. 58-89A-70(c), (d), and (e)."

SECTION 5. G.S. 58-89A-110(d) reads as rewritten:

"(d) A license shall not be issued to any professional employer organization unless (i) the organization first files with the Commissioner evidence of workers' compensation

coverage for all assigned employees in this State, including those leased from or coemployed with another ~~person, and that the premium paid by the licensee is~~ person, and (ii) the organization certifies to the Commissioner that it has provided its workers' compensation carrier with proper and necessary documentation to allow the carrier to determine and charge a premium that is commensurate with exposure and anticipated claim experience for all employees covered under policies issued by the carrier in the name of the licensee."

SECTION 6. Section 2 of S.L. 2004-162 reads as rewritten:

"**SECTION 2.** The Department of Insurance shall report to the ~~2005~~ 2007 General Assembly on the implementation, administration, and enforcement of Article 89 of Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce Article 89 of Chapter 58 of the General Statutes."

SECTION 7. Section 3 of S.L. 2004-162 reads as rewritten:

"**SECTION 3.** A person registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on the last day prior to the effective date of this act and a person who applies for and receives a registration pursuant to G.S. 58-89-15 prior to June 30, 2005, may continue to operate pending approval of the person's application for a license as long as the application is filed with the Commissioner no later than ~~April 1, 2005.~~ July 1, 2005. If the application for licensure is denied, the person shall cease offering professional employer services in this State. A person not registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective date of this act~~ July 1, 2005, shall not engage in or offer professional employer services in this State until the person has been issued a license under this act.

The Department shall continue to accept applications for registration and shall continue to issue registrations for professional employer organizations pursuant to G.S. 58-89-15, which shall be valid through June 30, 2005.

Notwithstanding any other provision of this act, an audited GAAP financial statement filed with the Commissioner by an applicant for licensure that otherwise meets the requirements of this act shall be accepted by the Commissioner if it has been filed with the Commissioner on or before June 30, 2005, has been prepared within the previous 180 days, and covers a fiscal year that ended December 31, 2004, or later."

SECTION 8. Effective January 1, 2005, Section 5 of S.L. 2004-162 reads as rewritten:

"**SECTION 5.** This act becomes effective ~~January 1, 2005,~~ July 1, 2005, and applies to any contracts entered into, any business conducted, and any actions taken on or after that date. Article 89 of Chapter 58 of the General Statues shall continue in effect until July 1, 2005."

SECTION 9. G.S. 58-6-25(d) is amended by adding a new subdivision to read:

"(9) Money appropriated to the Department of Insurance for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes."

SECTION 10. Effective July 1, 2005, there is appropriated from the Insurance Regulatory Fund established in G.S. 58-6-25 to the Department of Insurance the sum of one hundred fifty thousand dollars ($150,000) for the 2005-2006 fiscal year for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes.

SECTION 11. Except as otherwise expressly provided in this act, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 685
PROPOSED COMMITTEE SUBSTITUTE S685-PCS75274-RG-3

Short Title: Revise Professional Employer Organization Act. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER CERTAIN CIRCUMSTANCES, DECREASING THE FEE FOR LIMITED LICENSES, ESTABLISHING THE REQUIREMENTS FOR LIMITED LICENSES, REQUIRING THE COMMISSIONER OF INSURANCE TO PROVIDE FOR ALTERNATIVE LICENSES, PROVIDING THAT APPLICANTS FOR LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR ORGANIZATIONS APPLYING FOR LICENSURE ON OR BEFORE JUNE 30, 2005, CHANGING THE EFFECTIVE DATE FOR LICENSURE OF PROFESSIONAL EMPLOYER ORGANIZATIONS TO JULY 1, 2005, PROVIDING A TRANSITION PERIOD FOR ORGANIZATIONS REGISTERING UNDER ARTICLE 89 OF CHAPTER 58 OF THE GENERAL STATUTES, AND AUTHORIZING THE USE OF FUNDS FROM THE INSURANCE REGULATORY FUND FOR REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

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(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond ~~that~~ meets the requirements of this ~~section if~~ section, and (iii) 90 days' advance written notice is provided to the Commissioner.

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(f) In lieu of the surety bond required by this section, an applicant may submit to the Commissioner an irrevocable letter of credit in a form acceptable to the Commissioner issued by a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or may maintain on deposit with the Commissioner an amount equal to the amount required under subsection (a) of this section in cash or in value of securities of the kind specified in G.S. 58-5-20 and subject to the same conditions as the surety bond.

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SECTION 5. G.S. 58-89A-110(d) reads as rewritten:

"(d) A license shall not be issued to any professional employer organization unless (i) the organization first files with the Commissioner evidence of workers' compensation

coverage for all assigned employees in this State, including those leased from or coemployed with another ~~person, and that the premium paid by the licensee is~~ person, and (ii) the organization certifies to the Commissioner that it has provided its workers' compensation carrier with proper and necessary documentation to allow the carrier to determine and charge a premium that is commensurate with exposure and anticipated claim experience for all employees covered under policies issued by the carrier in the name of the licensee."

SECTION 6. Section 2 of S.L. 2004-162 reads as rewritten:

"**SECTION 2.** The Department of Insurance shall report to the ~~2005~~ 2007 General Assembly on the implementation, administration, and enforcement of Article 89 of Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce Article 89 of Chapter 58 of the General Statutes."

SECTION 7. Section 3 of S.L. 2004-162 reads as rewritten:

"**SECTION 3.** A person registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on the last day prior to the effective date of this act and a person who applies for and receives a registration pursuant to G.S. 58-89-15 prior to June 30, 2005, may continue to operate pending approval of the person's application for a license as long as the application is filed with the Commissioner no later than ~~April 1, 2005.~~ July 1, 2005. If the application for licensure is denied, the person shall cease offering professional employer services in this State. A person not registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective date of this act~~ July 1, 2005, shall not engage in or offer professional employer services in this State until the person has been issued a license under this act.

The Department shall continue to accept applications for registration and shall continue to issue registrations for professional employer organizations pursuant to G.S. 58-89-15, which shall be valid through June 30, 2005.

Notwithstanding any other provision of this act, an audited GAAP financial statement filed with the Commissioner by an applicant for licensure that otherwise meets the requirements of this act shall be accepted by the Commissioner if it has been filed with the Commissioner on or before June 30, 2005, has been prepared within the previous 180 days, and covers a fiscal year that ended December 31, 2004, or later."

SECTION 8. Effective January 1, 2005, Section 5 of S.L. 2004-162 reads as rewritten:

"**SECTION 5.** This act becomes effective ~~January 1, 2005,~~ July 1, 2005, and applies to any contracts entered into, any business conducted, and any actions taken on or after that date. Article 89 of Chapter 58 of the General Statues shall continue in effect until July 1, 2005."

SECTION 9. G.S. 58-6-25(d) is amended by adding a new subdivision to read:

"(9) Money appropriated to the Department of Insurance for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes."

SECTION 10. Effective July 1, 2005, there is appropriated from the Insurance Regulatory Fund established in G.S. 58-6-25 to the Department of Insurance the sum of one hundred fifty thousand dollars ($150,000) for the 2005-2006 fiscal year for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes.

SECTION 11. Except as otherwise expressly provided in this act, this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cowe	BPMHL
Ed Turlington	BPMHL
Tim Tucker	BPMHL
Esther Ivey	Electri Cities
Richard O'Brien	PEPNC
Jamy Bewley	LBA
Jim Skoggin	KCUA
Lynn Bonner	N&O
Courtney Crowder	NCDOI
Bruce Thompson	PARKER POE

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Mills	Senator Purcell's Office
Kary Everhart	Intern - Sen. P. Berger
Lee Hol[illegible]	KCLH
Rick Zechini	NC Assoc. of Realtors
Andy Ellen	NCRMA
Stephanie Lemon	NCAR
[illegible]	NMPS
Mike Carey	Carey + Associates
Frank W. Folger	NCDOT
Jim Long	VCOOT
Tim Tucker	NAPEO

Senate Commerce Committee
Tuesday, March 29, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 644	Exempt Banking Comm. Staff from SPA.	Senator Hoyle
SB 664	Small Business Regulatory Improvement Act.	Senator Hartsell
SB 729	Clarify Used MV Interest Charges Under RISA.	Senator Hoyle
SB 730	Clarify MV Definitions and Remedies.	Senator Hoyle

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, March 29, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 29, 2005, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Joanna Carmel from Chapel Hill, sponsored by Senator Ellie Kinnaird; and Jon Cox from Tabor City, sponsored by Senator R. C. Soles, Jr.

Senator Soles announced that Senate Bill 664, Small Business Regulatory Improvement Act, sponsored by Senator Fletcher Hartsell; Senate Bill 729, Clarify Used MV Interest Charges Under RISA, sponsored by Senator David Hoyle; and Senate Bill 730, Clarify MV Definitions and Remedies, also sponsored by Senator David Hoyle would be postponed to a later meeting.

Senator Soles then recognized Senator David Hoyle to explain Senate Bill 644, Exempt Banking Comm. Staff from SPA. Senator Forrester moved for a favorable report of the bill. The motion carried.

The meeting adjourned at 11:25 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, March 29, 2005

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

FAVORABLE

S.B. **644** Exempt Banking Comm. Staff from SPA.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 644

Short Title:	Exempt Banking Comm. Staff from SPA.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Commerce.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT EXEMPTING THE EMPLOYEES OF THE STATE BANKING COMMISSION FROM COVERAGE UNDER THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(23) The Office of the Commissioner of Banks."

SECTION 2. The exemption from the State Personnel Act authorized by this act shall be used by the Office of the Commissioner of Banks to develop organizational and compensation innovations that will result in the enhanced efficiency of operations. The Office of State Personnel shall assist the Commissioner of Banks in the development and implementation of an organizational structure and human resources programs that make the most appropriate use of the exemption. The Commissioner of Banks may, under the supervision of the Office of State Personnel, undertake human resources demonstration projects to develop and implement organizational and compensation innovations having the potential to benefit all State agencies.

By April 1, 2007, the Commissioner of Banks and the Office of State Personnel shall report jointly to the General Assembly on the results of the demonstration projects in meeting the agency's personnel needs and enhancing the efficiency of its operations.

SECTION 3. This act becomes effective July 1, 2005.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 29, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
Sam Taylor	Honda NA
Brad Lamb	NC Consumers Council
	NCRA
JEEF VANDYKE	BELLSOUTH
Paul Pulley	NCATL
Steve Woodson	NC Farm Bureau
David Crawford	AIA NC
	NCJC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 29, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Lee Holz	
[signature]	GSK
Tom V Mayhew	NCCAI
Marshall Barnes	Fiscal Research Division
Tripp Melton	Intern
Kay Isenhour	Intern
Cam Cover	BPOE
[signature]	Poyner + Spruill
Sharon Miller	CUCA
Gregg Thompson	NFIB
Susan Valauri	NC Attorney Gen

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 29, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney - Raleigh
Mike Lucas	Int'l Alliance Beer
Paul Stock	NC Bankers
Merle Claiborne	Per the Comm. of Banks
David Hanson	N.C. Office of the Commissioner of Banks
R. Paul Wilms	NCMBA

Senate Commerce Committee
Tuesday, April 5, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 178	Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr.	Senator Tillman
SB 577	Unauthorized Insurer Misconduct.-AB	Senator Dalton
SB 626	HIPAA Compliance and Fairness.-AB	Senator Thomas

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 5, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 5, 2005, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Marcus Brown from Raleigh, sponsored by Senator Vernon Malone; and Garland Homes from Wilson, sponsored by Senator A. B. Swindell.

Senator Soles recognized Senator Jerry Tillman to explain Senate Bill 178, Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr. Senator Walter Dalton moved the adoption of a committee substitute for discussion purposes. Senator Tillman explained the committee substitute. Senator Soles called on Mr. Nick Fountain of the Young, Moore and Henderson law firm, who is lawyer for the Code Officials Qualifications Board, to answer questions the members had about current regulations and changes that would occur with the legislation. Senator Jim Forrester moved for an unfavorable report of the bill, but favorable as to the committee substitute. The motion carried.

Senator Soles recognized Senator Walter Dalton to explain Senate Bill 577, Unauthorized Insurer Misconduct.-AB. Senator Dalton moved to give the bill a favorable report. The motion carried.

Senator Soles recognized Senator Scott Thomas to explain Senate Bill 626, HIPAA Compliance and Fairness.-AB. Senator Jim Jacumin moved the adoption of a committee substitute for discussion purposes. The motion carried. Senator Thomas explained the committee substitute. Mr. Frank Folger, legislative liaison for the Department of Insurance, reported there would be no increase in costs. Senator William Purcell moved for an unfavorable report of the bill, but favorable as to the committee substitute. The motion carried.

The meeting adjourned at 11:35 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 05, 2005

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

FAVORABLE

S.B. **577** Unauthorized Insurer Misconduct.-AB
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **626** HIPAA Compliance and Fairness.-AB
Draft Number: PCS 35197
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 05, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **178** Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr.

Draft Number:	PCS 65296
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 178

Short Title:	Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr.	(Public)
Sponsors:	Senator Tillman.	
Referred to:	Commerce.	

February 22, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN LAWS RELATING TO LICENSURE REQUIREMENTS FOR PLUMBING AND HEATING CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-21(a)(4) reads as rewritten:

"(a) Definitions. – For the purpose of this Article:

...

(4) The phrase "heating, group number three" shall be deemed and held to be ~~a~~ an individual direct heating or cooling system ~~of a building~~ that raises or lowers the temperature of the space within ~~the~~ a building or portion of a building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger using an air distribution system of ducts and having a mechanical refrigeration capacity of 15 tons or less. A mechanical refrigeration capacity of 15 tons or less shall apply to system capacity, not total building load. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150 degrees Fahrenheit requires either plumbing or heating group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.

...."

SECTION 2. G.S. 87-21(b)(6) reads as rewritten:

"(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. –

...

(6) Examinations shall be given at least twice each year, and additional examinations may be given as the Board deems wise and necessary. The examination shall be conducted in two parts to include a business and law portion and a technical portion. Requests for examination applications and information shall be supplied at no cost to the potential examinee. The Board may offer written examinations within 30 days or administer examinations by computer within ~~30~~ 10 days after approving an application. Applicants shall obtain the results of computerized examinations immediately upon completion of the examination. Upon passing the examination and paying the annual license fee, the applicant shall be issued a license. A person who fails to pass any examination shall not be reexamined until after ~~90~~ 30 days from the date the person was last examined. An applicant who fails to pass any examination may have up to six months to retake the examination and shall retake only the portion that he or she failed. The Board may require applicants who fail ~~the~~ any examination three times to ~~receive additional education before the applicant is allowed to retake the examination.~~ wait one year before retaking any portion of the examination.

..."

SECTION 3. G.S. 87-22 reads as rewritten:

"**§ 87-22. License fee; expiration and renewal; reinstatement.**

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, shall pay an annual license fee not to exceed one hundred fifty dollars ($150.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars ($75.00) and an annual license fee not to exceed three hundred dollars ($300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. The license fee shall be prorated monthly from the first day of January until the last day of November in the initial license year. It shall be the duty of the secretary and treasurer to send by United States mail or e-mail to every licensee registered with the Board, notice to the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, the notice to be mailed at least one month in advance of the expiration of the license. The Board may require payment of all unpaid annual fees before reissuing a license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the required fee during the month of January in each year, the Board shall increase the license fee by twenty-five dollars ($25.00) to cover any additional expense associated with late renewal. The Board shall require reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of

license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew the license at a fee not to exceed twenty-five dollars ($25.00)."

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

SENATE BILL 178:
Amend Certain Licensing Requirements for Plumbing and Heating Contractors.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Tillman
Date:	April 5, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S178-CSLU-1		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 178 would amend the licensing laws for plumbing and heating contractors to allow the licensing examination to be passed in parts, to allow a person licensed after October 1 of any year to pay half the usual licensing fee, and to set the fee for each exam at $100.***

CURRENT LAW: Current law requires that the examination for licensure be all taken at one time and that the person pass the entire exam. If the person fails to pass the entire exam, the person must retake the entire exam. All licensing fees must be paid for the entire year, regardless of the time of year the license is issued. The Board is permitted to charge up to $150 for examination.

BILL ANALYSIS: Section 1 of the Proposed Committee Substitute for Senate Bill 178 allows the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors to conduct the licensing exam in two parts, with one part including business and law, and the other part dealing with technical issues. Applicants may obtain test scores immediately after completing the exam when the exam is taken by computer. An applicant who fails any portion of the exam may retake the failed portion within six months without having to retake the entire exam. A person who fails the exam three times can take additional education or wait one year before retaking any portion of the exam.

Section 2 permits a person who obtains a license after passing an exam on or after October 1 of any year to receive a license for the remainder of the year by paying one-half of the usual license fee.

Section 3 allows the Board to charge up to $150 for each exam or part of an exam. Until the Board adopts rules to change the fee, the fee for each exam or a part of an exam shall be $100.

EFFECTIVE DATE: The bill becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 178
PROPOSED COMMITTEE SUBSTITUTE S178-CSLU-1 [v.2]

3/31/2005 11:14:39 AM

Short Title: Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr. (Public)

Sponsors:

Referred to:

February 22, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN LAWS RELATING TO LICENSURE REQUIREMENTS FOR PLUMBING AND HEATING CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-21(b)(6) reads as rewritten:

"(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. –

...

(6) Examinations shall be given at least twice each year, and additional examinations may be given as the Board deems wise and necessary. The examination shall be conducted in two parts to include a business and law portion and a technical portion. Requests for examination applications and information shall be made available online without charge and supplied at no cost to the potential examinee. The Board may offer written examinations or administer examinations by computer within 30 days after approving an application. Applicants shall be permitted to obtain the test score from each part of computerized examinations immediately upon completion of the examination. Upon passing the examination and paying the annual license fee, the applicant shall be issued a license. A person who fails to pass any examination shall not be reexamined until after 90 days from the date the person was last examined. An applicant who fails to pass any examination may take the failed portion within six months of the date approved to take the examination without retaking the portion passed. The Board may require applicants who fail ~~the~~ any part of the examination three times to receive additional education before the applicant is allowed to retake the ~~examination.~~examination or wait one year before retaking any portion of the examination.

...."

SECTION 2. G.S. 87-22 reads as rewritten:

"**§ 87-22. License fee; expiration and renewal; reinstatement.**

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, shall pay an annual license fee not to exceed one hundred fifty dollars ($150.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars ($75.00) and an annual license fee not to exceed three hundred dollars ($300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. Persons who obtain a license by passing an examination on or after October 1 of any year may receive a license for the remainder of the year by paying one-half of the usual license fee for that classification of license. It shall be the duty of the secretary and treasurer to send by United States mail or e-mail to every licensee registered with the Board, notice to the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, the notice to be mailed at least one month in advance of the expiration of the license. The Board may require payment of all unpaid annual fees before reissuing a license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the required fee during the month of January in each year, the Board shall increase the license fee by twenty-five dollars ($25.00) to cover any additional expense associated with late renewal. The Board shall require reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew the license at a fee not to exceed twenty-five dollars ($25.00)."

SECTION 3. G.S. 87-22.1 reads as rewritten:

"**§ 87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer.**

The Board shall charge a nonrefundable application and examination fee not to exceed one hundred fifty dollars ($150.00) for each ~~examination,~~examination or any part of an examination, and the funds collected shall be disbursed upon warrant of the chairman and secretary-treasurer, to partially defray general expenses of the Board. The application and examination fee shall be retained by the Board whether or not the applicant is granted a license. Until changed by the Board pursuant to rules adopted by the Board, the fee for each examination or any part taken on a particular day shall be one hundred dollars ($100.00)."

SECTION 4. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 178
PROPOSED COMMITTEE SUBSTITUTE S178-PCS65296-RU-11

Short Title: Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr. (Public)

Sponsors:

Referred to:

February 22, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN LAWS RELATING TO LICENSURE REQUIREMENTS FOR PLUMBING AND HEATING CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-21(b)(6) reads as rewritten:

"(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. –

...

(6) Examinations shall be given at least twice each year, and additional examinations may be given as the Board deems wise and necessary. The examination shall be conducted in two parts to include a business and law portion and a technical portion. Requests for examination applications and information shall be made available online without charge and supplied at no cost to the potential examinee. The Board may offer written examinations or administer examinations by computer within 30 days after approving an application. Applicants shall be permitted to obtain the test score from each part of computerized examinations immediately upon completion of the examination. Upon passing the examination and paying the annual license fee, the applicant shall be issued a license. A person who fails to pass any examination shall not be reexamined until after 90 days from the date the person was last examined. An applicant who fails to pass any examination may take the failed portion within six months of the date approved to take the examination without retaking the portion passed. The Board may require applicants who fail ~~the~~ any part of the examination three times to receive additional education before the applicant is allowed to retake the ~~examination.~~examination or wait one year before retaking any portion of the examination.

...."

SECTION 2. G.S. 87-22 reads as rewritten:

"**§ 87-22. License fee; expiration and renewal; reinstatement.**

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, shall pay an annual license fee not to exceed one hundred fifty dollars ($150.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars ($75.00) and an annual license fee not to exceed three hundred dollars ($300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. Persons who obtain a license by passing an examination on or after October 1 of any year may receive a license for the remainder of the year by paying one-half of the usual license fee for that classification of license. It shall be the duty of the secretary and treasurer to send by United States mail or e-mail to every licensee registered with the Board, notice to the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, the notice to be mailed at least one month in advance of the expiration of the license. The Board may require payment of all unpaid annual fees before reissuing a license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the required fee during the month of January in each year, the Board shall increase the license fee by twenty-five dollars ($25.00) to cover any additional expense associated with late renewal. The Board shall require reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew the license at a fee not to exceed twenty-five dollars ($25.00)."

SECTION 3. G.S. 87-22.1 reads as rewritten:

"**§ 87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer.**

The Board shall charge a nonrefundable application and examination fee not to exceed one hundred fifty dollars ($150.00) for each ~~examination,~~examination or any part of an examination, and the funds collected shall be disbursed upon warrant of the chairman and secretary-treasurer, to partially defray general expenses of the Board. The application and examination fee shall be retained by the Board whether or not the applicant is granted a license. Until changed by the Board pursuant to rules adopted by the Board, the fee for each examination or any part taken on a particular day shall be one hundred dollars ($100.00)."

SECTION 4. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 577*

Short Title:	Unauthorized Insurer Misconduct.-AB	(Public)
Sponsors:	Senators Dalton; Atwater and Dorsett.	
Referred to:	Commerce.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN UNAUTHORIZED INSURER SHALL NOT OPERATE IN THIS STATE IN ITS OWN NAME OR UNDER A "DOING BUSINESS AS" DESIGNATION AS A THIRD PARTY ADMINISTRATOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Prohibitions.**

(a) No insurance company shall act as a third party administrator with respect to residents of this State, or residents of another state from offices in this State, in connection with life or health insurance or annuities unless that insurance company is authorized to do the business of insurance in this State and otherwise complies with the applicable laws of this State.

(b) No insurance company shall enter into an agreement with an unauthorized insurance company to provide administrative services for residents of this State, or residents of another state from offices in this State, in connection with life or health insurance or annuities that would subject the unauthorized insurer to this section."

SECTION 2. This act becomes effective October 1, 2005.

SENATE BILL 577:
Unauthorized Insurer Misconduct

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Dalton
Date:	April 5, 2005	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 577 adds a new statute to Article 56 of Chapter 58 of the General Statutes, *Third Party Administrators*. G.S. 58-56-52 would prohibit an unauthorized insurance company from acting as a third party administrator in this State in connection with life or health insurance or annuities. The bill also prohibits an insurance company from entering into an agreement with an unauthorized insurer to provide administrative services in the State in connection with life or health insurance.

A "third party administrator" is defined in G.S. 58-56-2(5) as "a person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State, in connection with life or health insurance or annuities." Specific exceptions are provided in the statute which is set out below.

EFFECTIVE DATE: Senate Bill 685 would become effective October 1, 2005.

§ 58-56-2. Definitions.

The following definitions apply in this Article:

(1) Affiliate. Any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(2) Control. Defined in G.S. 58-19-5(2).

(3) Insurance. Any coverage offered or provided by an insurer.

(4) Insurer. A person who undertakes to provide life or health insurance or benefits in this State that are subject to this Chapter. The term "insurer" does not include a bona fide employee benefit plan established by an employer, an employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974.

(5) Third party administrator. A person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State, or residents of another state from offices in this State, in connection with life or health insurance or annuities, except any of the following:

a. An employer on behalf of its employees or the employees of one or more of its affiliates.

b. A union on behalf of its members.

c. An insurer that is licensed under Articles 1 through 67 of this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and pursuant to the laws of a state in which the insurer is licensed to write insurance.

d. An agent or broker who is licensed by the Commissioner to sell life or health insurance and whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to the trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code and its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code.

h. A financial institution subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent the financial institution or mortgage lender collects and remits premiums to licensed insurance agents or authorized insurers in connection with loan payments.

i. An attorney-at-law who adjusts or settles claims in the normal course of business as an attorney-at-law and who does not collect charges or premiums in connection with life or health insurance or annuities.

j. An adjuster licensed by the Commissioner whose activities are limited to adjustment of claims.

k. A person who acts solely as a TPA of one or more bona fide employee benefit plans established by an employer, an employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Income Security Act of 1974. The person shall comply with the requirements of G.S. 58-56-51(f).

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

(6) TPA. A third party administrator.

(7) Underwriting. This term includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer, the planning and coordination of an insurance program, and the ability to procure bonds and excess insurance.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 626*

Short Title:	HIPAA Compliance and Fairness.-AB	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Commerce.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO BRING NORTH CAROLINA LAW INTO COMPLIANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT REGARDING THE TYPE OF COVERAGE THAT CONSTITUTES CREDITABLE COVERAGE; TO PROVIDE SPECIAL ENROLLMENT PERIODS WITHOUT PENALTY FOR PERSONS ENROLLED UNDER A GROUP PLAN WHOSE COVERAGE IS TERMINATED WHEN AN INSURER DISCONTINUES WRITING A CERTAIN TYPE OF GROUP HEALTH INSURANCE COVERAGE THROUGHOUT THAT ENTIRE SMALL OR LARGE GROUP MARKET; AND TO PROVIDE CONTINUED GUARANTEED ISSUE RIGHTS TO A PERSON WHO IS HIPAA ELIGIBLE, WHO IS INSURED IN THE INDIVIDUAL MARKET, AND WHOSE INSURER DISCONTINUES WRITING A CERTAIN TYPE OF HEALTH INSURANCE COVERAGE THROUGHOUT THE ENTIRE INDIVIDUAL MARKET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-68-30(c)(1) reads as rewritten:

"(c) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.

b. Group or individual health insurance coverage.

c. Part A or part B of title XVIII of the Social Security Act.

d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.

e. Chapter 55 of title 10, United States Code.

f. A medical care program of the Indian Health Service or of a tribal organization.

g. A State health benefits risk pool.
h. A health plan offered under chapter 89 of title 5, United States Code.
i. A public health plan (as defined in federal regulations).
j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
k. The Health Insurance Program for Children established in Part 8 of Chapter 108A of the General Statutes, or any successor program.

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section and G.S. 58-51-15(a)(2)b."

SECTION 2. G.S. 58-68-30(f)(1) reads as rewritten:

"(f) Special Enrollment Periods. –

(1) Individuals losing other coverage. – A group health insurer shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

a. The employee or dependent was covered under an ERISA group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.
b. The employee stated in writing at the time that coverage under the group health plan or health insurance coverage was the reason for declining enrollment, but only if the health insurer required the statement at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time.
c. The employee's or dependent's coverage described in sub-subdivision a.: (i) was under a COBRA continuation provision and the coverage under the provision was exhausted; (ii) was not under that provision and either the coverage was terminated because of loss of eligibility for the coverage, including legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment; ~~or~~ (iii) employer contributions toward the coverage were ~~terminated.~~terminated; or (iv) was terminated by the health insurer pursuant to G.S. 58-68-45(c)(2).
d. Under the terms of the plan, the employee requests the enrollment not later than 30 days after the date of exhaustion of coverage described in sub-subdivision c.(i) of this subdivision

or termination of coverage or employer contribution described in sub-subdivision c.(ii) of this subdivision."

SECTION 3. G.S. 58-68-60 is amended by adding the following new subsection to read:

"**§ 58-68-60. Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.**

...

"(i) Rights of Replacement Coverage Upon Termination. – Subsection (a) of this section shall apply to an eligible individual whose coverage issued pursuant to this section is terminated by a health insurer pursuant to G.S. 58-68-65(c)(2) provided the application for the replacement coverage is dated not more than 63 days following the termination date."

SECTION 4. Sections 2 and 3 of this act become effective July 1, 2005, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 626:
HIPAA Compliance and Fairness

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Thomas
Date:	April 5, 2005	**Summary by:**	Tim Hovis*
Version:	First Edition		Committee Counsel

BACKGROUND: Senate Bill 626 is a recommendation of the Department of Insurance and amends various statutes to bring state law into compliance with the federal requirements of the Health Insurance Portability and Accountability Act of 1996, known as HIPAA,

HIPAA is a federal act that includes several provisions designed to protect health care coverage for working individuals and their families. Among its specific protections, HIPAA: limits the use of pre-existing condition exclusions; prohibits group health plans from discriminating by denying coverage or charging extra for coverage based on a family member's past or present poor health; and guarantees certain small employers, and certain individuals who lose job-related coverage, the right to purchase health insurance.

SUMMARY: Section 1 amends the definition of creditable coverage in G.S. 58-68-30 to provide that creditable coverage includes short-term, limited-duration health insurance coverage.

Under current law, limitations or exclusions on preexisting conditions are reduced by periods of creditable coverage applicable as of the enrollment date for group health insurance. The existence of creditable coverage is also used to determine the existence of guaranteed issue coverage upon termination of any existing coverage. Federal law requires that short-term, limited-duration coverage be included as creditable coverage. Section 1 of the bill would make this change and require that this type of coverage be included as coverage reducing the period of any preexisting condition exclusion by a group health insurer.

Section 2 of the bill amends G.S. 58-68-30 governing group special enrollment provisions under HIPAA to provide a special enrollment period for a person to enroll in a group plan without penalty when their own insurance was terminated by a health insurer pursuant to NCGS 58-68-45 as long as enrollment is requested within a certain number of days of the termination.

Under G.S. 58-68-45(c)(2), an insurer has the ability to terminate all health insurance coverage in this State if the insurer decides to withdraw from the group health insurance market in the State. In such instances, a participant or beneficiary affected by the termination has no apparent statutorily mandated special enrollment rights under another group health plan for which they are eligible as a dependent and for which they previously waived off coverage because they had their own coverage through another group plan. This provision resolves that problem in favor of the otherwise disadvantaged person whose coverage is terminated.

Section 3 amends 58-68-60 governing HIPAA eligible individuals to provide that once a person has obtained HIPAA eligible individual status, they retain the same guaranteed issue rights if their coverage is terminated by an insurer exercising termination rights under G.S. 58-68-65(c)(2) (which means they are terminating all individual coverage in this State) and the eligible individual replaces coverage within a stated time period.

Currently, when an individual insurer terminates all coverage in this State, HIPAA eligible individuals covered by the insurer are left with no options for replacement coverage if they have preexisting health concerns. This provision resolves that problem in favor of the otherwise disadvantaged individual whose coverage is terminated.

EFFECTIVE DATE: Sections 2 and 3 of Senate Bill 626 become effective July 1, 2005 and apply to policies or certificates issued on or after that date. The remainder of the act is effective when it becomes law.

*This summary was contributed to by the Department of Insurance.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 626*
PROPOSED COMMITTEE SUBSTITUTE S626-CSRG-7 [v.1]

4/5/2005 9:28:01 AM

Short Title: HIPAA Compliance and Fairness.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO BRING NORTH CAROLINA LAW INTO COMPLIANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT TO PROVIDE SPECIAL ENROLLMENT PERIODS WITHOUT PENALTY FOR PERSONS ENROLLED UNDER A GROUP PLAN WHOSE COVERAGE IS TERMINATED WHEN AN INSURER DISCONTINUES WRITING A CERTAIN TYPE OF GROUP HEALTH INSURANCE COVERAGE THROUGHOUT THAT ENTIRE SMALL OR LARGE GROUP MARKET; AND TO PROVIDE CONTINUED GUARANTEED ISSUE RIGHTS TO A PERSON WHO IS HIPAA ELIGIBLE, WHO IS INSURED IN THE INDIVIDUAL MARKET, AND WHOSE INSURER DISCONTINUES WRITING A CERTAIN TYPE OF HEALTH INSURANCE COVERAGE THROUGHOUT THE ENTIRE INDIVIDUAL MARKET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-68-30(c) reads as rewritten:

"(c) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.

b. Group or individual health insurance coverage.

c. Part A or part B of title XVIII of the Social Security Act.

d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.

e. Chapter 55 of title 10, United States Code.

f. A medical care program of the Indian Health Service or of a tribal organization.

g. A State health benefits risk pool.
h. A health plan offered under chapter 89 of title 5, United States Code.
i. A public health plan (as defined in federal regulations).
j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
k. ~~The Health Insurance Program for Children established in Part 8 of Chapter 108A of the General Statutes, or any successor program.~~ Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section and G.S. 58-51-15(a)(2)b."

(2) Not counting periods before significant breaks in coverage. –

a. In general. – A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.
b. Waiting period not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision and subdivision (d)(4) of this subsection, any period that an individual is in a waiting period for any coverage under a group health insurance plan or is in an affiliation period shall not be taken into account in determining the continuous period under sub-subdivision a. of this subdivision.
c. Time spent on short term limited duration health insurance not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision, any period that an individual is enrolled on a short term limited duration health insurance policy shall not be taken into account in determining the continuous period under sub-subdivision. a. of this subdivision so long as the period of time spent on the short term limited duration health insurance policy or policies does not exceed 12 months.
d. For an individual who elects COBRA continuation coverage during the second election period provided under the Trade Act of 2002, the days between the date the individual lost group health plan coverage and the first day of the second COBRA election period are not taken into account in determining whether a significant break in coverage as occurred.

(3) Method of crediting coverage. –

a. Standard method. – Except as otherwise provided under sub-subdivision b. of this subdivision for the purposes of applying subdivision (a)(3) of this subsection, a group health insurer shall count a period of creditable coverage without regard to the specific benefits covered during the period.

b. Election of alternative method. – A group health insurer may elect to apply subdivision (a)(3) of this subsection based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations rather than as provided under sub-subdivision a. of this subdivision. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election a group health insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

c. Health insurer notice. – In the case of an election under sub-subdivision b. of this subdivision with respect to health insurance coverage in the small or large group market, the health insurer: (i) shall prominently state in any disclosure statements concerning the coverage, and to each employer at the time of the offer or sale of the coverage, that the health insurer has made the election, and (ii) shall include in the statements a description of the effect of the election.

(4) Establishment of period. – Periods of creditable coverage for an individual shall be established through presentation of certifications described in subsection (e) of this section or in another manner that is specified in federal regulations."

SECTION 2. G.S. 58-68-30(f)(1) reads as rewritten:

"(f) Special Enrollment Periods. –

(1) Individuals losing other coverage. – A group health insurer shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

a. The employee or dependent was covered under an ERISA group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

b. The employee stated in writing at the time that coverage under the group health plan or health insurance coverage was the reason for declining enrollment, but only if the health insurer required the statement at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time.

c. The employee's or dependent's coverage described in sub-subdivision a.: (i) was under a COBRA continuation provision and the coverage under the provision was exhausted; (ii) was not under that provision and either the coverage was terminated because of loss of eligibility for the coverage, including legal separation, divorce, ~~death;~~ cessation of dependent status (such as attaining the maximum age to be eligible as a dependent child under the plan), death of an employee, termination of employment, ~~or~~ reduction in the number of hours of ~~employment;~~ employment, and any loss of eligibility for coverage after a period that is measured by reference to any of the foregoing; ~~or~~ (iii) employer contributions toward the coverage were ~~terminated.~~terminated; (iv) was terminated by the health insurer pursuant to § 58-68-45(c)(2); (v) in the case of coverage offered through an arrangement that does not provide benefits to individuals who no longer reside, live, or work in a service area, loss of coverage because an individual no longer resides, lives or works in the service area (whether or not within the choice of the individual), and no other benefit package is available to the individual; (vi) in the case of a situation in which an individual incurs a claim that would meet or exceed a lifetime limit on all benefits; or (vii) a situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual.

d. Under the terms of the plan, the employee requests the enrollment not later than 30 days after the date of exhaustion of coverage described in sub-subdivision c.(i) of this subdivision or termination of coverage or employer contribution described in sub-subdivision c.(ii) of this subdivision."

SECTION 3. G.S. 58-68-60 is amended by adding the following new subsections to read:

"(i) Rights of Replacement Coverage Upon Termination. – Subsection (a) of this section shall apply to an eligible individual whose coverage issued pursuant to this section is terminated by a health insurer pursuant to G.S. 58-68-65(c)(2) provided the application for the replacement coverage is dated not more than 63 days following the termination date.

(j) Waiting period – In determining the length of any break in coverage for an individual as prescribed in § 58-68-60(b)(1)(i), a significant break in coverage does not occur during the waiting period. The "waiting period" is defined as the period that begins on the date the individual submits a substantially complete application for coverage and ends on:

(1) If the application results in coverage, the date coverage begins;

(2) If the application does not result in coverage, the date on which the application is denied by the issuer or the date on which the offer for coverage lapses."

SECTION 4. G.S. 58-68-30(b) reads as rewritten:

"(b) Definitions. – For the purposes of this Part:

(1) Enrollment date. – With respect to an individual covered under a group health insurance plan, the date of enrollment of the individual in the coverage or, if earlier, the first day of the waiting period for the enrollment. If an individual receiving benefits under a group health insurance plan changes benefit packages, or if the plan changes health insurer, the individual's enrollment date does not change.

(2) Late enrollee. – With respect to coverage under a group health insurance plan, a participant or beneficiary who enrolls under the plan other than during:

a. The first period in which the individual is eligible to enroll under the plan, or

b. A special enrollment period under subsection (f) of this section.

(3) Preexisting condition exclusion. –

a. In general. – "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the ~~date of enrollment for the~~ ~~coverage,~~ effective date of coverage under a group health plan or group health insurance coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before ~~the date.~~ that day. A preexisting condition exclusion includes any exclusion applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage under a group health plan or group health insurance coverage, such as a condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period.

b. Treatment of genetic information. – Genetic information shall not be treated as a condition described in subdivision (a)(1) of this subsection in the absence of a diagnosis of the condition related to the information.

(4) Waiting period. – With respect to a group health insurance plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

a. If an employee or dependent enrolls as a late enrollee or special enrollee, any period before such late or special enrollment is not a waiting period.

b. If an individual seeks individual health insurance coverage, a waiting period begins on the date the individual submits a substantially complete application and ends on: (i) if the application results in coverage, the date coverage begins; or (ii) if the application does not result in coverage, the date on which the application is denied by the health insurer or the date on which the offer for coverage lapses."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 626*
PROPOSED COMMITTEE SUBSTITUTE S626-PCS35197-RG-7

Short Title: HIPAA Compliance and Fairness.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO BRING NORTH CAROLINA LAW INTO COMPLIANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT; TO PROVIDE SPECIAL ENROLLMENT PERIODS WITHOUT PENALTY FOR PERSONS ENROLLED UNDER A GROUP PLAN WHOSE COVERAGE IS TERMINATED WHEN AN INSURER DISCONTINUES WRITING A CERTAIN TYPE OF GROUP HEALTH INSURANCE COVERAGE THROUGHOUT THAT ENTIRE SMALL OR LARGE GROUP MARKET; AND TO PROVIDE CONTINUED GUARANTEED ISSUE RIGHTS TO A PERSON WHO IS HIPAA ELIGIBLE, WHO IS INSURED IN THE INDIVIDUAL MARKET, AND WHOSE INSURER DISCONTINUES WRITING A CERTAIN TYPE OF HEALTH INSURANCE COVERAGE THROUGHOUT THE ENTIRE INDIVIDUAL MARKET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-68-30(c) reads as rewritten:

"(c) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.

b. Group or individual health insurance coverage.

c. Part A or part B of title XVIII of the Social Security Act.

d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.

e. Chapter 55 of title 10, United States Code.

f. A medical care program of the Indian Health Service or of a tribal organization.

g. A State health benefits risk pool.
h. A health plan offered under chapter 89 of title 5, United States Code.
i. A public health plan (as defined in federal regulations).
j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
k. ~~The Health Insurance Program for Children established in Part 8 of Chapter 108A of the General Statutes, or any successor program.~~ Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section and G.S. 58-51-15(a)(2)b.

(2) Not counting periods before significant breaks in coverage. –

a. In general. – A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.
b. Waiting period not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision and subdivision (d)(4) of this subsection, any period that an individual is in a waiting period for any coverage under a group health insurance plan or is in an affiliation period shall not be taken into account in determining the continuous period under sub-subdivision a. of this subdivision.
c. Time spent on short term limited duration health insurance not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision, any period that an individual is enrolled on a short term limited duration health insurance policy shall not be taken into account in determining the continuous period under sub-subdivision. a. of this subdivision so long as the period of time spent on the short term limited duration health insurance policy or policies does not exceed 12 months.
d. For an individual who elects COBRA continuation coverage during the second election period provided under the Trade Act of 2002, the days between the date the individual lost group health plan coverage and the first day of the second COBRA election period are not taken into account in determining whether a significant break in coverage has occurred.

(3) Method of crediting coverage. –

a. Standard method. – Except as otherwise provided under sub-subdivision b. of this subdivision for the purposes of applying subdivision (a)(3) of this subsection, a group health insurer shall count a period of creditable coverage without regard to the specific benefits covered during the period.

b. Election of alternative method. – A group health insurer may elect to apply subdivision (a)(3) of this subsection based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations rather than as provided under sub-subdivision a. of this subdivision. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election a group health insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

c. Health insurer notice. – In the case of an election under sub-subdivision b. of this subdivision with respect to health insurance coverage in the small or large group market, the health insurer: (i) shall prominently state in any disclosure statements concerning the coverage, and to each employer at the time of the offer or sale of the coverage, that the health insurer has made the election, and (ii) shall include in the statements a description of the effect of the election.

(4) Establishment of period. – Periods of creditable coverage for an individual shall be established through presentation of certifications described in subsection (e) of this section or in another manner that is specified in federal regulations."

SECTION 2. G.S. 58-68-30(f)(1) reads as rewritten:

"(1) Individuals losing other coverage. – A group health insurer shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

a. The employee or dependent was covered under an ERISA group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

b. The employee stated in writing at the time that coverage under the group health plan or health insurance coverage was the reason for declining enrollment, but only if the health insurer required the statement at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time.

c. The employee's or dependent's coverage described in sub-subdivision a.: (i) was under a COBRA continuation provision and the coverage under the provision was exhausted; (ii) was not under that provision and either the coverage was terminated because of loss of eligibility for the coverage, including legal separation, divorce, ~~death;~~ cessation of dependent status (such as attaining the maximum age to be eligible as a dependent child under the plan), death of an employee, termination of employment, ~~or~~ reduction in the number of hours of ~~employment;~~ employment, and any loss of eligibility for coverage after a period that is measured by reference to any of the foregoing; ~~or~~ (iii) employer contributions toward the coverage were ~~terminated.~~ terminated; (iv) was terminated by the health insurer pursuant to G.S. 58-68-45(c)(2); (v) in the case of coverage offered through an arrangement that does not provide benefits to individuals who no longer reside, live, or work in a service area, loss of coverage because an individual no longer resides, lives, or works in the service area (whether or not within the choice of the individual), and no other benefit package is available to the individual; (vi) in the case of a situation in which an individual incurs a claim that would meet or exceed a lifetime limit on all benefits; or (vii) a situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual.

d. Under the terms of the plan, the employee requests the enrollment not later than 30 days after the date of exhaustion of coverage described in sub-subdivision c.(i) of this subdivision or termination of coverage or employer contribution described in sub-subdivision c.(ii) of this subdivision."

SECTION 3. G.S. 58-68-60 is amended by adding the following new subsections to read:

"(i) Rights of Replacement Coverage Upon Termination. – Subsection (a) of this section shall apply to an eligible individual whose coverage issued pursuant to this section is terminated by a health insurer pursuant to G.S. 58-68-65(c)(2) provided the application for the replacement coverage is dated not more than 63 days following the termination date.

(j) Waiting Period. – In determining the length of any break in coverage for an individual as prescribed in G.S. 58-68-60(b)(1)(i), a significant break in coverage does not occur during the waiting period. The "waiting period" is defined as the period that begins on the date the individual submits a substantially complete application for coverage and ends on:

(1) If the application results in coverage, the date coverage begins; or

(2) If the application does not result in coverage, the date on which the application is denied by the issuer or the date on which the offer for coverage lapses."

SECTION 4. G.S. 58-68-30(b) reads as rewritten:

"(b) Definitions. – For the purposes of this Part:

(1) Enrollment date. – With respect to an individual covered under a group health insurance plan, the date of enrollment of the individual in the coverage or, if earlier, the first day of the waiting period for the enrollment. If an individual receiving benefits under a group health insurance plan changes benefit packages, or if the plan changes health insurer, the individual's enrollment date does not change.

(2) Late enrollee. – With respect to coverage under a group health insurance plan, a participant or beneficiary who enrolls under the plan other than during:

a. The first period in which the individual is eligible to enroll under the plan, or

b. A special enrollment period under subsection (f) of this section.

(3) Preexisting condition exclusion. –

a. In general. – "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the ~~date of enrollment for the coverage,~~ effective date of coverage under a group health plan or group health insurance coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before ~~the date.~~that day. A preexisting condition exclusion includes any exclusion applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage under a group health plan or group health insurance coverage, such as a condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.

b. Treatment of genetic information. – Genetic information shall not be treated as a condition described in subdivision (a)(1) of this subsection in the absence of a diagnosis of the condition related to the information.

(4) Waiting period. – With respect to a group health insurance plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

a. If an employee or dependent enrolls as a late enrollee or special enrollee, any period before such late or special enrollment is not a waiting period.

b. If an individual seeks individual health insurance coverage, a waiting period begins on the date the individual submits a substantially complete application and ends on: (i) if the application results in coverage, the date coverage begins; or (ii) if the application does not result in coverage, the date on which the application is denied by the health insurer or the date on which the offer for coverage lapses."

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 5, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Nick Fountas	Young Moore & Henderson
Abby Emanuelson	NMSS
Frank (W) Folger	NCDOT
Tripp McHan	Intern
Kevin Mills	Senator Purcell's Office
Kerry Isenhour	Sen. Phil Berger's office
Bruce Thompson	Parker Poe
Colleen Kocharek	Holt York
Roger Bone	Bone & Assoc

Senate Commerce Committee
Tuesday, April 12, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 2	No Violent/Obscene Video Game Sales to Minor.	Senator Boseman
SB 189	All-Terrain Vehicle Regulation.	Senator Purcell
SB 729	Clarify Used MV Interest Charges Under RISA.	Senator Hoyle
SB 730	Clarify MV Definitions and Remedies.	Senator Hoyle

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 12, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 12, 2005, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Michael A. Wilson from Leasburg, sponsored by Senator Hugh Webster; Murphy B. Fuller from Greensboro, sponsored by Senator Phil Berger; and Michael D. Wilson from Greensboro, sponsored by Senator Kay Hagan.

Senator Soles recognized Senator David Hoyle to explain Senate Bill 729, Clarify Used MV Interest Charges Under RISA. Mr. Al Ripley, representing the North Carolina Justice Center, spoke in opposition to the bill. Mr. Robert Glaser, representing the North Carolina Automobile Dealers Association, spoke in favor of the bill. Senator Hoyle moved for a favorable report of the bill. Motion carried.

Senator Soles recognized Senator Julia Boseman to explain Senate Bill 2, No Violent/Obscene Video Game Sales to Minor. Senator Boseman moved the adoption of a committee substitute for discussion purposes and explained the provisions of the bill. She introduced Dr. Michael Rich, Director, Center on Media and Child Health, Children's Hospital Boston/Harvard Medical School, who spoke in favor of the bill. Dr. Darion Rapoza, Entertainment Science, voiced his concern that his violence and drug abuse prevention video games would fall under the video games not to be sold to minors. Dr. Steve Jurovics, President of LimiTV, Inc., spoke in favor of the bill. Mr. Andy Ellen, representing the Retail Merchants and Entertainment Software Association, spoke against four aspects of the bill. Patricia Yancey, speaking for Jennifer Rudinger, representing the American Civil Liberties Union, suggested the committee look at the constitutionality of portions of the bill. Ms. Yancey said Ms. Rudinger was willing to work with committee counsel on those issues. After some questioning by committee members, Senator Soles adjourned the meeting due to lack of time.

The meeting adjourned at 12:05 p.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 26, 2005

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

FAVORABLE

S.B. **729** Clarify Used MV Interest Charges Under RISA.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 729

Short Title:	Clarify Used MV Interest Charges Under RISA.	(Public)
Sponsors:	Senators Hoyle; and Bingham.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY INCLUDABLE INTEREST CHARGES FOR USED MOTOR VEHICLES UNDER THE RETAIL INSTALLMENT SALES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25A-15(c) reads as rewritten:

"(c) A finance charge rate not to exceed the higher of the rate established in subsection (b) or the rate set forth below may be imposed in a consumer credit installment sale contract repayable in not less than six installments for a self-propelled motor vehicle:

(1) Eighteen percent (18%) per annum for vehicles one and two model years old;

(2) Twenty percent (20%) per annum for vehicles three model years old;

(3) Twenty-two percent (22%) per annum for vehicles four model years old; and

(4) Twenty-nine percent (29%) per annum for vehicles five model years old and older.

A motor vehicle is one model year old on January 1 of the year following the designated year model of the vehicle. <u>For purposes of this subsection only, any loan commitment fee or other similar charge imposed on the seller by an assignee that is passed on to the consumer shall not be included in the calculation of the finance charge rate.</u>"

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

SENATE BILL 729:
Clarify Used Motor Vehicle Interest Charges Under the Retail Installment Sales Act.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hoyle
Date:	March 29, 2005	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 729 would clarify that loan commitment fees or other similar charges imposed on a seller by an assignee that are passed on to the consumer in a consumer credit sale are not to be included in the calculation of the finance charge rate for the financing of the sale of a used motor vehicle.***

CURRENT LAW: Under current law in G.S. 25A-8, finance charges include all charges paid directly or indirectly by the buyer and imposed by the seller incident to the extension of credit in a retail installment sale. This law makes no distinction for loan assignment costs charged to the seller that are passed on to the consumer. The finance charge rate permitted to be charged for the installment sale of a used motor vehicle ranges from 18% on motor vehicles 1 or 2 years old to 29% on motor vehicles 5 years or older.

BILL ANALYSIS: Senate Bill 729 makes it clear that loan commitment fees or other similar charges imposed by an assignee on the seller that are passed on to the consumer for the financing of the purchase of the used motor vehicle, are not to be included in the calculation of the maximum finance charges permitted on the loan. The effect of this exclusion will be to permit a seller to charge a finance charge up to the limits set forth in the statute plus the loan commitment fee or other similar charges imposed by the assignee of the loan on the seller that is passed on to the consumer.

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

§ 25A-15. Finance charge rates for consumer credit installment sale contracts.

(a) With respect to a consumer credit installment sale contract, a seller may contract for and receive a finance charg not exceeding that permitted by this section. For the purposes of this section, the finance charge rates are the rates that ar required to be disclosed by the Consumer Credit Protection Act.

(b) Except as hereinafter provided, the finance charge rate for a consumer credit installment sales contract may not exceed:

(1) Twenty-four percent (24%) per annum where the amount financed is less than one thousand five hundred dollars ($1,500);

(2) Twenty-two percent (22%) per annum where the amount financed is one thousand five hundred dollars ($1,500) or greater, but less than two thousand dollars ($2,000);

(3) Twenty percent (20%) where the amount financed is two thousand ($2,000) or greater, but less than three thousand dollars ($3,000);

(4) Eighteen percent (18%) per annum where the amount financed is three thousand dollars ($3,000) or greater,

except that a minimum finance charge of five dollars ($5.00) may be imposed.

§ 25A-8. "Finance charge" defined.

(a) "Finance charge" means the sum of all charges payable directly or indirectly by the buyer and imposed by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable:

(1) Interest, time price differential, service, carrying or other similar charge however denominated;

(2) Premium or other charges for any guarantee or insurance protecting the seller against the buyer's default or other credit loss;

(3) Loan fee, finder's fee or similar charge; and

(4) Fee for an appraisal, investigation or credit report.

(b) Finance charge does not include transfer of equity fees, substitution of collateral fees, default or deferment charges, or additional charges for insurance as permitted by G.S. 25A-17 or charges for insurance excluded by Section 226.4(a) of Regulation Z promulgated pursuant to section 105 of the Consumer Credit Protection Act.

(c) With respect to a transaction in which the seller acquires a security interest in real property, finance charge does not include charges excluded by section 226.4(e) of Regulation Z promulgated pursuant to section 105 of the Consumer Credit Protection Act

§ 25A-6. "Seller" defined.

"Seller" means one regularly engaged in the business of selling goods or services. Unless otherwise provided, "seller" also means and includes an assignee of the seller's right to payment but use of the term does not itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment. (1971, c. 796, s. 1.)

§ 25A-2. "Consumer credit sale" defined.

(a) Except as provided in subsection (c) of this section, a "consumer credit sale" is a sale of goods or services in which

(1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,

(2) The buyer is a natural person,

(3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,

(4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and

(5) The amount financed does not exceed twenty-five thousand dollars ($25,000) or, in the case of a debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed.

Consumer Connections

April 12, 2005

The North Carolina Consumers Council, Inc.

— Published and Printed by NCCC

3725 National Dr, STE 115 | Raleigh, NC 27612 | www.NCconsumer.org | 919-781-8654

Don't Make it More Confusing to Buy a Used Car!



How confusing is buying a used car? You may have no problem at all... or you may need a team of moral support just to be able to make it past the salesman. Whatever your scenario, SB 729 is out to make it more confusing to buy a used car.

Chew on this: North Carolina auto dealers sold 839,434 used cars in 2004. That's a lot of vehicle transactions! Can you imagine the confusion to those 839,434 consumers when they realize extra fees were added that were not calculated into the APR? The Consumer Protection Division of the Attorney General's Office already receives five calls per day from concerned consumers about auto purchases. That number can only go up is SB 729 is not amended.

The current bill raises the following questions:

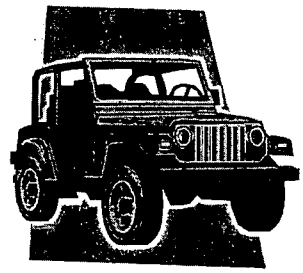
Why do we need more confusion about the transaction? Why can't the APR stay inclusive of all costs?

Would this change in law leave North Carolina in compliance with the federal Truth in Lending Act (TILA)?

What is the economic reason for this change in law? North Carolina's auto dealers are doing quite well. In fact, their annual meeting last year was in London, England. Our consumers are paying for that!

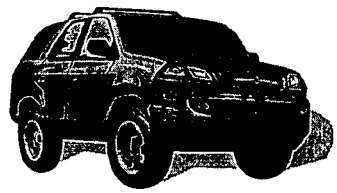
Let's amend the bill:

Lower the statutory interest rates, which were last reviewed in the 1980s, to reflect the changing times.



If we are opening discussion of the Retail Installment Sales Act, then we need to consider an inflation update to the coverage of $25,000. Many cars cost more than that now. Expanding the coverage to $50,000 or $75,000 would cover most cars and allow for future inflation.

Substitute to SB 729



A BILL TO BE ENTITLED

AN ACT TO CLARIFY INCLUDABLE INTEREST CHARGES FOR USED MOTOR VEHICLES UNDER THE RETAIL INSTALLMENT SALES ACT.

The General Assembly of North Carolina enacts:

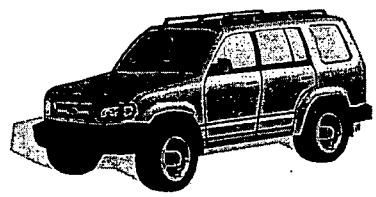
SECTION 1. G.S. 25A-15(c) reads as rewritten:

"(c) A finance charge rate not to exceed the higher of the rate established in subsection (b) or the rate set forth below may be imposed in a consumer credit installment sale contract repayable in not less than six installments for a self-propelled motor vehicle:

(1) Eighteen percent (18%) per annum for vehicles one and two model years old; and

(2) Twenty percent (20%) per annum for vehicles three model years old and older;

A motor vehicle is one model year old on January 1 of the year following the designated year model of the vehicle

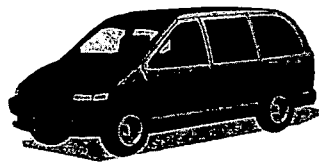


Before a consumer buyer signs an agreement for financing the purchase of a motor vehicle, a dealer shall provide to the consumer buyer a financing disclosure form that is separate from the sales contract and states the following in the same language as the sales contract:

"Notice

Based upon your credit score, the amount of the loan, and the term of the loan, the lowest interest rate the dealer is able to arrange for you is ___%. For processing your loan, the dealer is adding a dealer markup of ____% to this interest rate.

You may be able to obtain a lower interest rate from your credit union, bank or other lending source.



you take delivery of a motor vehicle before the interest rate and other terms for financing the motor vehicle are nalized, you have the right, until you and the dealer sign a financing agreement and the lender pays the dealer for the motor vehicle, to return the motor vehicle to the dealer and have your trade-in vehicle, if any, returned to you."

SECTION 2. G.S. 25A-2 is rewritten as follows to update for inflation.

§ 25A-2. "Consumer credit sale" defined.

Substitute to SB 729 — Continued

(a) Except as provided in subsection (c) of this section, a "consumer credit sale" is a sale of goods or services in which

(1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,

(2) The buyer is a natural person,

(3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,

(4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and

(5) The amount financed does not exceed *seventy-five thousand dollars ($75,000)* or, in the case of a debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed.

SECTION 3. This act is effective when it becomes law.

Substitute to SB 729

Substitute language for current bill before Senate Commerce.

One issue for legal staff: does the federal Truth in Lending Law prohibit the exclusion of fees from interest rate calculations?

A BILL TO BE ENTITLED

AN ACT TO CLARIFY INCLUDABLE INTEREST CHARGES FOR USED MOTOR VEHICLES UNDER THE RETAIL INSTALLMENT SALES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25A-15(c) reads as rewritten:

"(c) A finance charge rate not to exceed the higher of the rate established in subsection (b) or the rate set forth below may be imposed in a consumer credit installment sale contract repayable in not less than six installments for a self-propelled motor vehicle:

(1) Eighteen percent (18%) per annum for vehicles one and two model years old; and

(2) Twenty percent (20%) per annum for vehicles three model years old and older;

~~(3) Twenty-two percent (22%) per annum for vehicles four model years old; and~~

~~(4) Twenty-nine percent (29%) per annum for vehicles five model years old and older.~~

A motor vehicle is one model year old on January 1 of the year following the designated year model of the vehicle. For purposes of this subsection only, any loan commitment fee or other similar charge imposed on the seller by an assignee that is passed on to the consumer shall not be included in the calculation of the finance charge rate provided any fee or fees does not exceed one hundred fifty dollars ($150) total."

SECTION 2. G.S. 25A-2 is rewritten as follows to update for inflation.

§ 25A-2. "Consumer credit sale" defined.

(a) Except as provided in subsection (c) of this section, a "consumer credit sale" is a sale of goods or services in which

(1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,

(2) The buyer is a natural person,

(3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,

(4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and

(5) The amount financed does not exceed ~~twenty-five thousand dollars ($25,000)~~ seventy-five thousand dollars ($75,000) or, in the case of a debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed.

SECTION 3. This act is effective when it becomes law.

Joan Leatherman (Sen. Soles)

From: Glaser, Robert [RGlaser@ncada.com]
Sent: Monday, April 11, 2005 6:16 PM
To: Sen. David Hoyle; Sen. Doug Berger; Sen. Eddie Goodall; Sen. Harris Blake; Sen. James Forrester; Sen. Jim Jacumin; Sen. John Kerr; Sen. Julia Boseman; Sen. Katie Dorsett; Sen. Keith Presnell; Sen. Larry Shaw; Sen. Linda Garrou; Sen. Malcolm Graham; Sen. Martin Nesbitt; Sen. Phil Berger; Sen. R. C. Soles; Sen. Richard Stevens; Sen. Tom Apodaca; Sen. Tony Rand; Sen. Vernon Malone; Sen. Walter Dalton; Sen. William Purcell
Subject: Senate Commerce -- Car Dealer Bills

Dear Senator ----

In advance of Tuesday's Senate Commerce Committee meeting, I am writing to ask your support of two bills on the committee Calendar.

Senate Bill # 729 (Clarification of Interest Charges) and Senate Bill # 730 (Clarification of Motor Vehicle Definitions) are two bills that are sponsored by Sen. David Hoyle that are firmly and universally supported by the 700 franchised car and truck dealers, and their 33,000 employees, across North Carolina.

Both of the bills are very short, one-page bills that will provide some legal protection to your local dealers while clarifying practices that are currently in place today. I'd be happy to answer any questions that you may have regarding these proposed bills.

Thank you for your support of North Carolina's local Car and Truck Dealers.

Robert J. Glaser, President
North Carolina Auto Dealers Assn.
"Proud of our Past, Prepared for our Future"
919-828-4421
919-829-9525 Fax

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 2

Corrected Copy 1/28/05
Corrected Copy 2/1/05

Short Title:	No Violent/Obscene Video Game Sales to Minor.	(Public)
Sponsors:	Senators Boseman, Rand; Albertson, Berger of Franklin, Clodfelter, Dalton, Dannelly, Garrou, Graham, Hagan, Holloman, Hoyle, Jenkins, Kerr, Lucas, Malone, Purcell, Snow, Soles, Swindell, Thomas, and Weinstein.	
Referred to:	Commerce.	

January 27, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENE AND GRAPHICALLY VIOLENT VIDEO GAMES TO MINORS AND TO REQUIRE VIDEO GAME RETAILERS TO INFORM CONSUMERS THAT A VIDEO GAME RATING SYSTEM IS AVAILABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; and G.S. 14-190.19, participating in prostitution of a minor.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is

patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, video games, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:

a. Masturbation, whether done alone or with another human or an animal.

b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.

c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.

d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state.

(7) Video Games. – An object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology."

SECTION 2. Article 39 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-317.1. Disseminating a graphically violent video game to a minor.**

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

(1) "Graphically violent" means the visual depiction of serious injury to human beings, actual or virtual, including aggravated assault, decapitation, dismemberment, or death.

(2) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(b) Offense. – It is unlawful for a person to sell, rent, or otherwise disseminate for consideration to a minor a graphically violent video game if the person knows the character or content of the video game.

(c) Penalty. – A violation of this section is a Class 1 misdemeanor.

"**§ 14-317.2. Video game retailer must inform customer that video game ratings are available.**

(a) The following definitions apply in this section:

(1) "Video game retailer" means a person who sells or rents video games to the public.

(2) "Video game" is as defined in G.S. 14-317.2(a)(2).

(b) Every video game retailer shall post a sign providing information to consumers about a video game rating system or notifying consumers that a rating system is available to aid in the selection of a game. The sign shall be posted within the retail establishment in a prominent area.

(c) A video game retailer shall make available to consumers, upon request, information that explains the video game rating system."

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 4. 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 D

SENATE BILL 2
Corrected Copy 1/28/05
Corrected Copy 2/1/05
PROPOSED COMMITTEE SUBSTITUTE S2-CSSU-4 [v.6]

4/11/2005 5:34:35 PM

Short Title: No Violent/Obscene Video Game Sales to Minor. (Public)

Sponsors:

Referred to:

January 27, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENE AND GRAPHICALLY VIOLENT VIDEO GAMES TO MINORS AND TO REQUIRE VIDEO GAME RETAILERS TO INFORM CONSUMERS THAT A VIDEO GAME RATING SYSTEM IS AVAILABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; and G.S. 14-190.19, participating in prostitution of a minor.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, video games, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:

a. Masturbation, whether done alone or with another human or an animal.

b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.

c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.

d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state.

(7) Video Game. – An object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology."

SECTION 2. Article 39 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-317.1. Definitions for certain offenses concerning video games.**

The following definitions apply to G.S. 14-317.2, disseminating to a minor a video game that is harmful to minors; G.S. 14-317.3, video games that are harmful to minors

shall be located in an area not open to view by minors; and G.S. 14-317.4, video game retailer and video arcade must inform customer that video game ratings are available.

(1) Graphic violence. – The realistic visual depiction of serious injury to human beings, actual or virtual, including aggravated assault, decapitation, dismemberment, or death.

(2) Harmful to minors. – That quality of any video game that depicts graphic violence and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the depiction of graphic violence in the video game has a predominant tendency to appeal to a morbid interest of minors in violence; and

b. The average adult person applying contemporary community standards would find that the depiction of graphic violence in the video game is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The video game lacks serious literary, artistic, political, or scientific value for minors.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Video arcade. – Any premises where minors are legally permitted to conduct business and ten or more video game machines or devices are operated.

(5) Video game. – An object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(6) Video game retailer. – Any person who sells or rents video games to the public.

"**§ 14-317.2. Disseminating to a minor a video game that is harmful to minors.**

(a) Offense. – It is unlawful for a person to do any of the following:

(1) Sell, rent, or otherwise disseminate for consideration to a minor a video game that is harmful to minors if the person knows the character or content of the video game.

(2) Allow a minor for consideration to operate a video game that is harmful to minors in a video arcade if the person knows the character or content of the video game.

(b) Defenses. – Except as provided in subdivision (2) of this subsection, a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

(1) The person was a parent or legal guardian of the minor.

(2) Before the dissemination, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the video game was disseminated was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.

(3) The dissemination was made with the prior consent of a parent or guardian of the recipient.

(c) Penalty. -- A violation of this section is a Class 1 misdemeanor.

"**§ 14-317.3. Video games that are harmful to minors shall be located in an area not open to view by minors.**

(a) Video game retailer must provide separate viewing area for video games that are harmful to minors. -- A video game retailer who sells or rents video games that are harmful to minors shall create an area within the retailer's business establishment that is not open to view by minors for the placement of the video games and for any material that advertises the sale or rental of the video games. The area shall be labeled `adults only'.

(b) Video arcade must provide separate viewing area for video games that are harmful to minors. – Any person who has custody, control, or supervision of a video arcade that includes video games that are harmful to minors as a selection on its video game machines or devices shall create an area within the arcade that is not open to view by minors for the placement of the video games and for any material that advertises the video games. The area shall be labeled `adults only'.

(c) Penalty. -- A violation of this section is a Class 2 misdemeanor. Each day's violation of this section is a separate offense."

"**§ 14-317.4. Video game retailer and video arcade must inform customer that video game ratings are available.**

(a) Notification that video game rating system is available. – Every video game retailer and every person who has custody, control, or supervision of a video arcade shall post a sign that notifies consumers of any rating system created by the video gaming industry that is available to aid in the selection of a game. The sign shall be posted within the retail establishment or video arcade in a prominent area.

(b) Duty to provide video game rating system upon request. – A video game retailer or a person who has custody, control, or supervision of a video arcade shall make available to consumers, upon request, the video game rating system and information that explains the video game rating system.

(c) Penalty. – A violation of this section is a Class 3 misdemeanor.

SECTION 3. Chapter 66 of the General Statutes is amended by adding a new article to read:

"Article 41.

Video Games

"**§ 66-340. Labeling required for graphically violent video games; notification of video game rating system.**

(a) Definitions. – The following definitions apply to this article.

(1) "Graphic violence" is as defined in G.S. 14-317.1(1).
(2) "Video arcade" is as defined in G.S. 14-317.1(4).
(3) "Video game" is as defined in G.S. 14-317.1(5).
(4) "Video game retailer" is as defined in G.S. 14-317.1(6).

(b) Video games that contain graphic violence must be labeled. – It is unlawful for a video retailer to sell or rent any video game that contains graphic violence unless the cover of the video game displays a label that accurately describes the type of violence portrayed in the video. If the video game is rated, then the video retailer shall also provide, upon request, the information that explains the game rating system and identifies the sponsors of the game rating system.

(c) Video games in video arcades that contain graphic violence must be labeled. – It is unlawful to allow the operation of any video game in a video arcade that contains graphic violence unless the video game displays a label that accurately describes the type of violence portrayed in the video game. If the video game is rated, then the person who has custody, control, or supervision of the video arcade shall also provide, upon request, the information that explains the game rating system and identifies the sponsors of the game rating system.

(d) Violation is an unfair practice. – A violation of this section shall constitute an unfair practice under G.S. 75-1.1."

SECTION 4. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 5. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 2:
No Violent/Obscene Video Game Sales to Minor

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senators Boseman and Rand
Date:	April 12, 2005	**Summary by:**	Wendy Graf Ray
Version:	S2-CSSU-4[v.6]		Committee Counsel

SUMMARY: ***Senate Bill 2 would prohibit the dissemination of sexually explicit and graphically violent video games to minors; require video game retailers and arcades to provide separate viewing areas for graphically violent video games and to inform customers of rating systems for video games; and require labeling of graphically violent video games.***

CURRENT LAW: Current law prohibits disseminating to minors material that is harmful to minors, but "harmful to minors" only includes material that depicts sexually explicit nudity or sexual activity, and "material" does not include video games. North Carolina law does not currently restrict minors' access to video games.

BILL ANALYSIS: Senate Bill 2 would restrict minors' access to certain video games and require notice to consumers of the content of video games as follows:

Dissemination of sexually explicit video games. Section 1 of the bill would add video games to the list of sexually explicit materials that may not be displayed or distributed to minors under existing law.

Dissemination of graphically violent video games. Section 2 of the bill would prohibit disseminating to a minor video games that are harmful to minors, and "harmful to minors" is defined as a video game that depicts graphic violence and has the following characteristics:

- The average adult applying contemporary community standards would find that the depiction has a predominant tendency to appeal to a morbid interest of minors in violence; and
- The average adult applying contemporary community standards would find that the depiction is patently offensive to prevailing standards of what is suitable for minors; and
- The video game lacks serious literary, artistic, political, or scientific value for minors.

Violation would be a Class 1 misdemeanor, but it would be a defense that the person was the parent or guardian of the minor, the person requested and received evidence of identification indicating that the minor was at least 18, or that the dissemination was made with prior consent of the parent or guardian.

Separate viewing area for graphically violent video games. Section 2 would require that video game retailers and video arcades create separate areas for placement of graphically violent video games that are not open to view by minors.

Violation would be a Class 2 misdemeanor, and each day the person is in violation would be a separate offense.

Notice to customer of video game ratings. Section 2 would also require that video game retailers and video arcades post signs in a prominent area to notify customers of any rating system available to aid in the selection of a game. Information about the rating system would have to be made available to customers upon request.

Violation would be a Class 3 misdemeanor.

Labeling of graphically violent video games. Section 3 of the bill would require that video games sold or rented by video game retailers or operated in video arcades be labeled with an accurate description of the type of violence portrayed in the video game. If the video game is rated, information explaining the rating system would also have to be made available upon request.

Violation would be an unfair practice under G.S. 75-1.1 for which a court could impose a civil penalty up to $5,000 for each violation.

Severability. Section 4 of the bill provides that if any provision of the act is found to be invalid, it would not affect the validity of any other provision.

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

Testimony of
Michael Rich, MD, MPH
Center on Media and Child Health
Children's Hospital Boston/Harvard Medical School
before the
North Carolina Senate Commerce Committee
April 12, 2005

Thank you for the opportunity to testify before you today as a pediatrician, as a child health researcher, as a media producer, and as a parent. My name is Dr. Michael Rich. I am director of the Center on Media and Child Health, an interdisciplinary research center dedicated to understanding the effects of entertainment media on the physical, mental, and social health of children and adolescents. I practice pediatrics and adolescent medicine at Children's Hospital Boston and I teach at Harvard Medical School and Harvard School of Public Health. In my research, I investigate the effects of television, movies, video games, and the Internet on the physical, mental, and social health of children and adolescents and develop pro-child and health-positive media as tools for research, education, and advocacy.

The Effects of Media on Child Health

One hundred years ago, the leading causes of illness and death in children were infectious diseases and congenital anomalies. Physicians did not have the antibiotics or the technology to intervene, but health research found their causes to be environmental - poor sanitation, crowded housing, and pollution – and prevented much misery. Today, the greatest threats to children and adolescents are the outcomes of acquired health risk behaviors – violence, substance use, sexual risk behaviors, and nutritional problems from obesity to eating disorders. The top three causes of death in adolescents are violent in nature – unintended injury, homicide, and suicide. Just as the environmental causes of disease and death were discovered and addressed a century ago, we must examine the new environment of the Information Age to determine the sources of new morbidities.

The medical community first voiced concern about the effects of media on child health in the early 1950s, shortly after the introduction of television to the general public. Since that time, media technologies have grown exponentially, in variety, sophistication, interactivity, and potency of their effects on users. With popularity of new media among children and adolescents, pressing questions are at the forefront for parents, clinicians, teachers, and policy makers. Video games and the extreme content that they can deliver are justifiably at the center of these questions.

Video games are challenging television as the medium of choice in the homes of American families. A national study this year found that 83% of families with children between the ages of 8 and 18 had a video game console in their home, 56% had 2 or more consoles, and 49% of the children had a gaming system in their room. Each day, 41% of children play a console video game and 35% a handheld game. On average, boys play video games an hour and 12 minutes and girls play 25 minutes a day. In one study, 2.5%

of male college freshman played video games more than 20 hours a week. Ten percent of toddlers and preschoolers play video games, and video games of all ratings are available for free download on the Internet, making access to any game easy for even young children.

Considering the increasing amount of time children and young adults spend with these games, the physical consequences of the activity need to be explored. Video games, especially violent video games, arouse their players. Heart rate and blood pressure increase during game play. Anxiety is increased, leading, in some cases, to sleep disturbance and nightmares. In one study, children who played video games for more than 1 hour a day were more likely to show signs of sleep deprivation such as black rings under the eyes and muscle stiffness in their shoulders. For some children, video game play has been documented to be related to video-induced seizures, tendonitis, nerve compression, and carpal tunnel syndrome. There is preliminary evidence that during play, gamers secrete higher levels of endorphins, natural opiates, establishing a biological basis for the observation that these games may be addicting. Finally, there is growing evidence that video game play may contribute to obesity, probably through increasing sedentary behavior in otherwise active children.

From the perspective of child health professionals, however, concern about physical problems associated with video game play pale in comparison to those related to potential effects on young people's psychological and social health. Video games are technologically brilliant, interactive, and immersive virtual reality experiences, creating worlds and characters with whom the player interacts. The gamer is the main character in a narrative that plays out in real time. Confronted with a series of increasingly difficult challenges, the gamer attempts them over and over again, until each is overcome and the player rewarded with points and a new challenge. Video games are virtual reality simulators of a variety of activities, rehearsing and rewarding patterns of response to experience, what psychologists call "behavioral scripts". The engaging, immersive, even addicting, virtual reality of video games is thought to be among the most powerful and effective teaching tools yet devised. Children are learning from video games. The question is – what are they learning?

Unfortunately, violent video games are by far the most popular: 53% of 7th and 8th graders listed a video game portraying fantasy violence among their favorites. In 2001, games that awarded points for violence against others represented 89% of the top sellers. For more than 50 years, researchers have documented the relationship between televised violence and aggressive beliefs, attitudes, and behaviors. Hundreds of studies have nearly unanimously shown that simply watching violent behaviors can cause increased anxiety and fear, desensitization to violence, and aggressive thoughts and behaviors in viewers. Studies have demonstrated that entertainment violence that is narratively associated with pleasurable feelings such as comedy or sexual attraction has a much more potent effect on viewers' aggressive attitudes and actions. The large body of research establishing that exposure to violent content is a causal component of aggressive behavior provides a foundation for researching the effects of violent video games. The effects of video game are stronger than those of passively viewed media. Reward structures within

violent video games associate pleasure with human death and suffering and reinforce the rehearsal of violent behavioral scripts. To win these games, players must act aggressively, and they must do it well.

Video games are rapidly evolving. Research to date has been both limited and hampered by research designs that have lagged behind game technology. Early studies on the effects of video games met with wide ranging critiques and the conclusions of some scholars that their findings were inconclusive. This criticism from the industry, while understandable, is unfounded. Studies performed in a laboratory setting show that there is a causal relationship between video game play and aggression, while large correlational studies show that video game play has effects on real-world behaviors. Meta-analysis of video game research as a whole has found an effect size of video game play on violent behavior of .20, similar to the effect size of condom use on sexually transmitted HIV, and stronger than the association between lead exposure and mental retardation. When violent thoughts are the outcome, the effect of video gaming is even stronger at .26. The research in this area shows that violent video games are linked to physiological arousal, aggressive thoughts and behavior, and decreases in helping behavior.

Over the long term, children learn violence by playing violent video games. The narratives that play out in these games constitute detailed belief structures about human behavior, aggression, expectations of others' aggression, and what it takes to prevail in such an environment. These behavioral scripts are rehearsed and reinforced every time a child plays a violent video game. Ultimately, the effects are cumulative – the general aggressiveness of the child's personality increases and this, in turn, influences his or her tendency to behavior aggressively in future encounters.

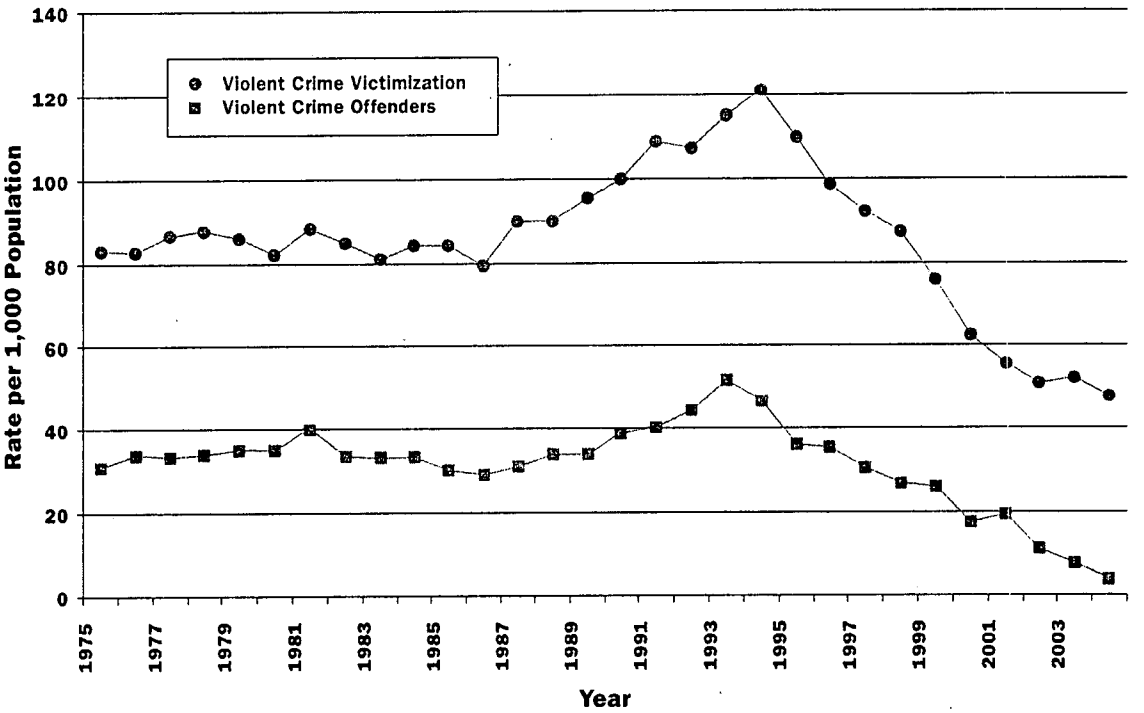
Reducing children's exposure to violent games is more effective than intervening after exposure. In an intervention study, children who were involved in a program designed to reduce television viewing and video game play were shown to have a 25% reduction in peer-rated aggressive behaviors. Well designed programs teaching children alternative activities can be effective at reducing media use and the negative behavioral consequences associated with it. The video game industry has created and implemented a game rating system through the Entertainment Software Ratings Board (ESRB), applying age ratings and content descriptors to each game. Unfortunately, none of the ESRB raters are child development experts and their goal is not to determine what is healthy or safe for children, but to judge what parents would find acceptable for their children.

For a rating system to effectively limit children's access to adult content, two goals must be met: 1) Parents must be aware of the system, understand it, and use it to make decisions about what games they provide their children, and 2) The assigned ratings must accurately represent the content of the games. In a national survey by the Kaiser Family Foundation, only 52% of parents said they use the rating system to guide their game purchases. When adolescents were surveyed, only 19% said that their parents had ever prevented them from getting a game because of the rating; 53% said that their parents never check the rating of a game. Other research shows that parents do not all agree with

the ratings applied by the ESRB. Approximately 1/3 of the E-rated games that parents reviewed were deemed questionable or inappropriate for the targeted 3- to 7-year-old players. Parents considered 57% of T-rated games inappropriate for teens. Researchers at the Center on Media and Child Health have evaluated the validity of video game ratings. E-rated games were found to contain violence 64-79% of the time, and 94% of T-rated games contain violence. About half of the T-rated games studied contained content that was not included in the content labels for the games. These findings call into question the validity and usefulness of the ESRB rating system as it currently stands. Until an objective, consistent, and developmentally appropriate video game rating system is put in place, parents will not have a reliable tool for protecting their children.

Effective media ratings are important to us as individuals and as a society. Designed and used properly, they allow us to create and consume a variety of media while protecting both child health and creative freedom. Censorship is anathema to our free society. It suppresses the free expression of ideas, stifling both science and culture, the mind and soul of our country. As a filmmaker, I know and love the possibilities of media, and I respect them. What I seek, as a pediatrician and as a parent, is a means whereby game makers can create and sell whatever they wish, and parents and children can choose and use those games knowledgeably and safely. We have established means for ensuring the safety of what we feed our children's bodies, we need similar measures to ensure the safety of what we feed their minds. Entertainment media are not inherently dangerous. They are a powerful tool that must be used thoughtfully and wisely. Just as the same shovel can be used to hit someone over the head or to prepare a field for planting, so, too, media can harm or help. Remember that on September 11, 2001, people who had trained on flight simulators learned to fly well enough to reduce our tallest buildings to rubble. Each day thousands of children entertain themselves with games that simulate killing others with their bare hands or a variety of realistic weapons, games that reward them for robbery, rape, and murder. What we teach our children today will determine the world they create for all of us tomorrow. It is our task, as parents, as citizens, and as compassionate people, to do what we can to teach our children the lessons and to give them the tools to make their world safe, healthy, and free.

2005 Index of Child Well-Being Finds Violent Youth Crime and Victimization Continue Dramatic Decline



Rates of both violent youth crime and youth victimization peaked in the early 1990s, but have declined dramatically since then to levels that are below those of 1975. Projections for 2003 and 2004 indicate that these trends are likely to continue. Changes in this area of children's lives have led the overall improvements in the CWI since 1994 and have had a major impact on the overall well-being of youth and children, as reflected in the CWI.

Several factors contribute to the dramatic reduction in violent juvenile crime and victimization.

Some scholars believe that parents have become more active in controlling their children's behaviors and in building attachments to mainstream institutions and values. Trends towards increased scheduling of children's after-school activities and the substitution of indoor video games and computer entertainment for outdoor activities may have led to less exposure to the risks of crime and delinquent behavior. In addition, "echo boomers" are more oriented towards team play and participation in mainstream institutions such as schools and Church than their predecessors. Moreover, the economic expansion of the late 1990s offered the promise of real jobs as an alternative to crime.

During the 1990s, may states toughened their criminal justice laws to treat adolescent and teenager violent offenders as adults. By raising the stakes for juvenile offenders, this may have reduced violent criminal activity.

Finally, community-oriented policing remains a strategy local police have used successfully to control youth crime and delinquent behavior.

American Civil Liberties Union of North Carolina

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**STATEMENT IN OPPOSITION TO SENATE BILL 2:
AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENE AND GRAPHICALLY VIOLENT VIDEO GAMES TO MINORS AND TO REQUIRE VIDEO GAME RETAILERS TO INFORM CONSUMERS THAT A VIDEO GAME RATING SYSTEM IS AVAILABLE**

To: North Carolina Senate Commerce Committee (Sen. R. C. Soles, Jr., Chair)
From: Jennifer Rudinger, Executive Director
Date: April 12, 2005

I am the Executive Director of the American Civil Liberties Union of North Carolina ("ACLU-NC"), the North Carolina affiliate of the American Civil Liberties Union. The ACLU-NC is devoted to the protection and enhancement of those fundamental rights and constitutional values embodied in the Bill of Rights. Central to this mission is our advocacy regarding the right of free expression as recognized under the U.S. Constitution's First Amendment and Article 1, Section 14, of the North Carolina Constitution.

The ACLU-NC appreciates the opportunity to express our concerns about Senate Bill 2. The proposed legislation amends existing prohibitions on the dissemination of obscene materials to minors by adding a new prohibition on the dissemination of graphically violent video games to minors.[1] Violation of this new prohibition would be a Class 1 misdemeanor.

The ACLU-NC recognizes the State's important interest in protecting the well being of minors and preventing acts of youth violence. We respectfully submit, however, that Senate Bill 2 will not further these objectives. We are no less certain that enactment of these proposals would involve the State in a regulatory scheme that undermines constitutional protections afforded the right to freedom of speech.

S. 2 Impermissibly Restricts the Sale and Purchase of Video Games in Violation of the First Amendment

The Supreme Court has held that the content-based regulation of protected speech presumptively violates the First Amendment. Any such regulation is subject to strict scrutiny – that is, to survive a constitutional challenge, the government must demonstrate that the regulation is

[1] The violent content being prohibited is defined as "the visual depiction of serious injury to human beings, actual or virtual, including aggravated assault, decapitation, dismemberment, or death."

necessary to serve a compelling state interest and that it is narrowly tailored to achieve that end.[2] This is the constitutional test that must be applied to the proposed legislation; it is our view that S. 2 fails this test.

In applying this test, it is important to keep in mind the Supreme Court's observation that "minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them."[3] In a seminal case from the Vietnam War era, the Supreme Court observed that "minors may not be regarded as closed-circuit recipients of only that which the State chooses to communicate."[4]

Interactive video games are generally considered "speech" within the meaning of the First Amendment.[5] Federal Circuit courts have found that violent video games "contain stories, imagery, 'age-old themes of literature,' and messages, 'even an ideology,' just as books and movies do."[6] The proposed legislation specifically targets video and computer games containing violence, and therefore proposes to regulate video games based on content.

While it is clear that the State has a compelling interest in safeguarding the physical and psychological well being of minors,[7] it is equally clear that this bill is not narrowly tailored to address the alleged harm.

The Supreme Court has held that

> When the Government defends a regulation on speech as a means to . . . prevent anticipated harms, it must do more than simply posit the existence of the disease to be

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[2] Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983).
[3] Erznoznik v. City of Jacksonville, 422 U.S. 205, 213 (1975).
[4] Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 508, 511 (1969) (holding that students who wore black arm bands to school to protest the Vietnam War engaged in protected speech).
[5] The United States Supreme Court has made it clear that First Amendment protection of speech is not limited to the expression of ideas or information, but extends to entertainment as well. See Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981). While the Supreme Court and the Fourth Circuit Court of Appeals have yet to be confronted directly with the issue, other circuits have held that interactive video games are a form of expression fully protected by the First Amendment. See American Amusement Machine Ass'n v. Kendrick, 244 F.3d 572 (7th Cir. 2001); James v. Meow Media, 300 F.3d 683 (6th Cir. 2002); Interactive Digital Software Ass'n v. St. Louis County, Mo., 329 F.3d 954 (8th Cir. 2003); Video Software Dealers Association v. Maleng, 325 F. Supp.2d 1180 (W. D. Wash. 2004); see also Reno v. American Civil Liberties Union, 521 U.S. 844 (1997) (finding that Internet sites are protected speech); Universal City Studios, Inc. v. Corley, 273 F.3d 420 (2d Cir. 2001) (holding that computer code conveying information is speech entitled to protection under the First Amendment).
[6] Interactive Digital Software Ass'n, 329 F.3d at 957, quoting American Amusement Machine Ass'n, 244 F.3d at 578-99.
[7] See New York v. Ferber, 458 U.S. 747, 756-57 (1982).

> cured. It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.[8]

Two federal Circuit Courts have recently examined this issue of harm in the context of laws similar to S. 2. In both cases, the laws failed because the proposed legislative remedy could not be expected to "cure the disease."[9] One of these cases arose when the Indianapolis City Council enacted an ordinance restricting minors' access to video games depicting graphic violence, defined as "realistic serious injury to a human or human-like being where such serious injury includes amputation, decapitation, dismemberment, bloodshed, mutilation, maiming or disfigurement."[10] The City's stated interest was the prevention of harm to minors caused by playing violent video games.

Judge Richard Posner, however, rejected the alleged causal link between violent video games and increased levels of violence, noting that social science studies "do not find that video games have ever caused anyone to commit a violent act, as opposed to feeling aggressive, or have caused the average level of violence to increase anywhere."[11]

Judge Posner also observed:

> When Dirty Harry or some other avenging hero kills off a string of villains, the audience is expected to identify with him, to revel in his success, to feel their own finger on the trigger. It is conceivable that pushing a button or manipulating a toggle stick engenders an even deeper surge of aggressive joy, but of that there is no evidence at all.[12]

Accordingly, because the City of Indianapolis failed to present empirical support for its view that violent video games cause psychological harm to minors, the ordinance was found to be unconstitutional.

It has been argued that violence depicted in video games is different from the violence seen in other media because the video games are interactive. And for this reason the courts should adopt a less demanding test in analyzing the regulation of violent videos.

Judge Posner also rejected this argument.

> "[T]his point is superficial, in fact erroneous. All literature (here broadly defined to include movies, television, and the other photographic media, and popular as well as

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[8] Turner Broadcasting Sys., Inc. v. FCC, 512 U.S. 622, 664 (1994).
[9] See American Amusement Machine Ass'n, 244 F.3d at 579; Interactive Digital Software Ass'n, 329 F.3d at 959.
[10] American Amusement Mach. Ass'n v. Kendrick, 115 F. Supp.2d 943, 946 (S.D. Ind. 2000).
[11] American Amusement Machine Ass'n, 244 F.3d at 578-79.
[12] Id. at 579.

highbrow literature) is interactive; the better it is, the more interactive. Literature when it is successful draws the reader into the story, makes him identify with the characters, invites him to judge them and quarrel with them, to experience their joys and sufferings as the reader's own."[13]

There is a Lack of Empirical Evidence to Establish that Playing Violent Video Games Causes Violence

In addition to undermining fundamental constitutional rights and principles, there are other compelling reasons to question the underlying public policy interest that S. 2 seeks to advance -- that by restricting access to depictions of violence in interactive games, it is possible to reduce the incidence of actual violence or aggression.[14]

It is a common misrepresentation that a link exists between violent media and violent behavior. Most studies and experiments on violent video games, however, have not found adverse imitative effects.[15] Those studies reporting a causal connection have generally relied on minor statistical differences and have used unrealistic tests for aggression. For example, in one such experiment subjects were required to play a portion of either a violent or non-violent video game, and were then tested for aggression by giving "noise blasts" to game opponents or by recognizing "aggressive words" on a computer screen. A slightly larger number of participants who played the violent video game gave somewhat longer noise blasts or recognized the words on the screen fractions of sections more quickly. Based on these results, the authors of the study concluded that graphically violent video games increased aggressive behavior.[16]

The cities of St. Louis and Indianapolis relied on this particular lab experiment to assert that violent video games cause harm to minors. Both the Seventh and Eighth Circuits however, found no meaningful correlation between viewing violent videos and acting violently and struck down the respective ordinances."[17]

Alternative Strategies for Addressing Youth Violence

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[13] Id. at 577.
[14] See *Parents Beware: Retail Stores Ignore Video Game Rating,* (The Council of the City of New York Staff Report to the Committee on Oversight and Investigations), December 2003 at i-ii.
[15] Interactive Digital Software Ass'n v. St. Louis County, Mo., Brief Amici Curiae of Thirty-three Media Scholars in Support of Appellants, cited in 31 HOFSTRA L. REV. 419, 435 (2002).
[16] Id. at 437.
[17] See American Amusement Machine Ass'n v. Kendrick, 244 F.3d 572 (7th Cir. 2001); Interactive Digital Software Ass'n v. St. Louis County, Mo., 329 F.3d 954 (8th Cir. 2003).

Professor Edward Donnerstein, in summarizing scholarship on violence in the media, observed that if the child has an aggressive predisposition, the mass media can maintain and reinforce such a disposition. This, however, is "much different," Professor Donnerstein points out, "from causation and does not suggest regulation."[18]

Data indicate that education and media literacy can help a great deal in mitigating any negative effects caused to a young person by media violence. In addressing the issue of television violence, Professor Donnerstein has commented:

> Children can learn to be informed viewers. Children can learn to critically evaluate the mass media. There is research to suggest that if children are aggressive and watch a lot of violent programs but their parents give them information on how to view those programs, the impact of media violence can be mitigated. Education would go an incredibly long way to deal with this problem. It takes money and time, but it would solve many problems in this particular area. Legislation is not going to change the problem of easy access. Education, on the other hand, will.[19]

And in considering the effects of violent conduct depicted in video games, one should not discount the salutary effects on social and psychological development. Studies have found that exaggerated on-screen violent fantasy may provide a healthy release of aggressive feelings and that fantasy play involved in violent video games can instill feelings of positive achievement and competence in a competitive arena.[20]

What's more, Judge Posner took note in his ruling on the Indianapolis ordinance that certain video games can serve to dispel gender stereotypes among youth. Judge Posner, in finding that violent video games contain stories and ideologies, described "Ultimate Mortal Kombat 3":

> "A man and a woman are dressed in vaguely medieval costumes, and wield huge swords. The woman is very tall, very fierce, wields her sword effortlessly. The man and the woman duel, and the man is killed. Another man appears—he is killed too. The woman wins all the duels. She is as strong as the men, she is more skillful, more determined, and she does not flinch at the sight of blood. Of course, her success depends on the player's skill, and the fact that the player, whether male of female, has chosen to be the female fighter. But the game is feminist in depicting a woman as fully capable of holding her own in violent combat with heavily armed men. [The video game] thus has a message, even an 'ideology'. . . ."[21]

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[18] Edward Donnerstein, *Mass Media Violence: Thoughts on the Debate*, 22 HOFSTRA L. REV. 827, 829-30 (1994).
[19] Id. at 831.
[20] Joel Saxe, "Violence in Videogames: What are the Pleasures?" Paper presented at the Int'l Conference on Violence in the Media, St. John's University, Oct. 1994, pp. 2, 8, 10, quoted in Interactive Digital Software Ass'n v. St. Louis County, Mo., Brief Amici Curiae of Thirty-three Media Scholars in Support of Appellants, 31 HOFSTRA L. REV. 419, 435 (2002).
[21] American Amusement Machine Ass'n, 244 F.3d at 578.

Of course, any one of us may find the content of certain videos offensive, despicable, and lacking any socially redeeming value. But the point is that these are personal, individual judgments. Absent clear and persuasive evidence that viewing violent videos causes harm (or that they violate obscenity laws), it is not appropriate for the government to make the determination as to which violent videos may be viewed.

The ACLU-NC respectfully suggests that there are meaningful policy measures that can help young people respond appropriately to violence in the interactive media – including education and media literacy. There is also persuasive empirical evidence that the State's regulations proposed in S. 2 offer little help in this regard. In light of these observations and the real harm this legislation poses to constitutionally protected activities, the ACLU-NC strongly recommends that the North Carolina General Assembly explore alternative strategies that can have a far greater impact in protecting young people from violence.

Joan Leatherman (Sen. Soles)

From: Paul J. McLaurin [mclaurin@ndl.com]
Sent: Tuesday, April 12, 2005 9:28 AM
To: Sen. R. C. Soles
Subject: Senate Bill 2 - § 14-317.1 and § 14-317.2

Senator Soles,

I understand that you are the chairman of the Commerce Committee of the North Carolina General Assembly and that your committee is considering a new bill containing § 14-317.1 and § 14-317.2 otherwise known as "AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENE AND GRAPHICALLY VIOLENT VIDEO GAMES TO MINORS...".

I work in Chapel Hill for Numerical Design, Ltd., a company in the video game industry, and I am concerned by the committee's consideration of this bill. I believe that this bill would have a chilling effect on my industry in the state of North Carolina. As I am sure you are aware, the video game industry has its own ratings system that rates the content of games so that parents of minors may make informed decisions about which games to allow their children to play. I think that it is highly inappropriate for the NC General Assembly to take the place of the parent in this decision-making process. Indeed, the language of the bill does not make any exception for relatives of the minor, which indicates to me that I may be prosecuted for allowing my own child to play a game that the state has determined unsuitable. As a parent, I want to retain the power to make those kinds of decisions for my child. I am also concerned about the precedent that this bill would set for the government determining appropriate content and activities for its citizens. There has been no definitive study linking violence in video games with actual violence. Also, several other states have passed bills similar to this one, and, as I am sure you are aware, they have all been judged unconstitutional by the courts. I don't see that this bill would be any different, but I am disappointed that legislators in the great state of North Carolina would even be considering such a bill.

I therefore urge you to impress upon the committee that this bill would be a very bad idea for parents in North Carolina and for all businesses in the state that work in the video game industry. This state is home to a fair number of companies in this industry, including several companies that make best-selling games. It would also send a chilling effect to all citizens regarding the willingness of the NC General Assembly to dictate to them how they must raise their children. Thank you for reading this message, and I hope that my ideas are heard and represented in the committee's meeting today.

Paul J. McLaurin
Software Engineer
Numerical Desgin, Ltd.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 189

Short Title:	All-Terrain Vehicle Regulation.	(Public)
Sponsors:	Senators Purcell; Allran, Bingham, Dannelly, Dorsett, and Kinnaird.	
Referred to:	Commerce.	

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE SALES AND OPERATIONS OF ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. – Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

~~(1c)~~(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation."

SECTION 2. Article 3 of Chapter 20 is amended by adding a new Part to read:

"Part 10C. Operation of All-Terrain Vehicles.

"**§ 20-171.10. Age restrictions.**

(a) No person less than 12 years of age shall operate an all-terrain vehicle.

(b) All-terrain vehicles with engine capacity up to and including 90 cubic centimeter displacement shall be operated only by persons 12 years of age or older.

(c) All-terrain vehicles with engine capacity greater than 90 cubic centimeter displacement shall be operated only by persons 16 years of age or older.

(d) All persons under the age of 16 shall be under the continuous supervision of a person 18 years of age or older while operating an all-terrain vehicle.

"**§ 20-171.11. Passengers.**

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

"**§ 20-171.12. Prohibited acts by sellers.**

No person shall knowingly sell or offer to sell an all-terrain vehicle:

(1) For use by a person under the age of 12 years.

(2) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age.

"**§ 20-171.13. Equipment requirements.**

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition.

(4) When operated during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at any time when visibility is reduced due to insufficient light or atmospheric conditions, it shall display a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws like those prohibiting the use of lamps when hunting at night.

"**§ 20-171.14. Prohibited acts by owners and operators.**

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(b) No owner shall authorize or permit an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) No person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) No person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

"**§ 20-171.15. Safety training and certificate.**

(a) On or before May 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute.

(b) On or before October 1, 2006, every all-terrain operator shall possess the safety certificate required by subsection (a) of this section.

"**§ 20-171.16. Penalties.**

(a) Any person violating the provisions of G.S. 20-171.10, 20-171.12, or 20-171.14(e) or (f) shall be guilty of a Class 2 misdemeanor and may be subject to a fine of not more than one thousand dollars ($1,000) for each violation.

(b) Any person violating any other provision of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00)."

SECTION 3. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 730

Short Title:	Clarify MV Definitions and Remedies.	(Public)
Sponsors:	Senators Hoyle; and Bingham.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DEFINITIONS AND REMEDIES UNDER THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-286(10) reads as rewritten:

"**§ 20-286. Definitions.**

The following definitions apply in this Article:

...

(10) Motor vehicle. – Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor ~~vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.~~vehicle:

1. Which has never been the subject of a sale other than between new motor vehicle dealers or between the manufacturer and dealer of the same franchise; or

2. Which is offered for sale by a new motor vehicle dealer and the vehicle's odometer mileage is 1,000 miles or less.

For the purposes of this Article, a motor vehicle that has previously been the subject of a sale by a new motor vehicle dealer may nonetheless be considered new and represented to the public as a new motor vehicle, so long as the vehicle's odometer mileage does not exceed 1,000 miles:

I. Whether that sale was conditional or unconditional;

II. Whether or not documents transferring title to the vehicle were executed and submitted to the Division; or

III. Whether or not the title to the vehicle was transferred.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above."

SECTION 2. G.S. 20-348 is amended by adding a new subsection to read:

"(c) A person claiming injury or damage as a result of any of the following shall elect between the remedies provided under subsection (a) of this section and the remedies afforded by other statutes and under the common law:

(1) Actions or conduct violating this Article.

(2) A violation of G.S. 20-71.4.

(3) Arising out of the sale, maintenance, or repair of a motor vehicle.

SECTION 3. This act is effective when it becomes law.

March 22, 2005

S 730. CLARIFY MV DEFINITIONS AND REMEDIES. *TO CLARIFY DEFINITIONS AND REMEDIES UNDER THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAWS.* Amends GS 20-286(10)a. to include in definition of "new motor vehicle" a vehicle offered for sale by a new motor vehicle dealer if the vehicle's odometer mileage is 1,000 or less, regardless of whether sale was conditional or unconditional, title transfer documents were executed, or the vehicle's title was transferred. Enacts new GS 20-348(c) to provide that a person claiming injury or damage as a result of a violation of Vehicle Mileage Act or GS 20-17.4 (failure to disclose vehicle damage), or arising from the sale, maintenance, or repair of a motor vehicle, must elect between the remedy provided by GS 20-348 and a statutory or common law remedy. **Intro. by Hoyle.**

Ref. to Commerce GS 20

PUBLIC BILL

S.B. 730

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DEFINITIONS AND REMEDIES UNDER THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAWS.

Introduced by Senator(s) Hoyle Boughton

Principal Clerk's Use Only

FILED MAR 21 2005

PASSED 1st READING

MAR 22 2005

AND REFERRED TO COMMITTEE

Commerce

Substitute language for S 730

Senate Commerce Committee

Current propose language under Section 2.

(c) A person claiming injury or damage as a result of any of the following shall elect between the remedies provided under subsection (a) of this section and the remedies afforded by other statutes and under the common law:

(1) Actions or conduct violating this Article.

(2) A violation of G.S. 20-71.4.

(3) Arising out of the sale, maintenance, or repair of a motor vehicle.

Change to Section 2: G.S. 20-348 is rewritten as follows to update for inflation.

§ 20-348. Private civil action.

(a) Any person who, with intent to defraud, violates any requirement imposed under this Article shall be liable in an amount equal to the sum of:

(1) Three times the amount of actual damages sustained or four thousand dollars ($4,000) ~~one thousand five hundred dollars ($1,500),~~ whichever is the greater; and

(2) In the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

(b) An action to enforce any liability created under subsection (a) of this section may be brought in any court of the trial division of the General Court of Justice of the State of North Carolina within four years from the date on which the liability arises. (1973, c. 679, s. 1; 1981 (Reg. Sess., 1982), c. 1280, s. 1.)

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCLM
Fran Preston	NCLM
David Stoller	State Farm
Tom Vitaglione	NCCAT
Jim Long	NCDOT
Steve Woodson	NC Farm Bureau
Eddie Caldwell	NC Sheriffs' Assn
Bill Rowe	NC Justice Center
[illegible]	C4L
Scott Mugler	Insider

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Vaughn	Appalachian State University
Ashley Watts	Appalachian State University
Wendy Blanton	Appalachian State
Emily Hobbs	Appalachian State University
Dara Rose	Appalachian State University
Jason H. Coats	Wilkins & Wellons, Smithfield, NC
Chris Kite	CEO for Responsible Lending
Leanne Murray	UNC School of Social Work
Chris Pierce	NC Motorcycle Dealer Assn.
Jimmy Stallings	NC Motorcycle Dealer Assn
Wayne Barber	NC Motorcycle Dealer Assn.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Amy Hobbs	HANC
Marla Dorrel	NC Child Fatality Task Force
Beth Scherer	NC Bar YLD - Smith Moore LLP
Montaye S McGee	Smith Moore LLP (NCBA YLD)
Robert PASchal	Young, Moore
Connie Winn	
Pam Johnson	Planned Parenthood
Amy W. Osborne	Nelson + Co. Durham NC
Jamie Kipke	Kipke + Rose Southport
Chandler Rose	Kipke & Rose Southport, NC
Erin Schaettpelz	UNC

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Senate Commerce Committee — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Amy Fulbright	Hunton & Williams
Margaret Westbrook	Kennedy Covington
Joshua D. Malcolm	Fayetteville State University
Kathy VanKleeck	Specialty Vehicle Institute of America 1235 S. Clark St., Arlington, VA 22202
John Carbone MD	Dorothea Dix Hospital, Forensic Unit; NCCU School of Law
Stephen Jurovics, Ph.D.	LimiTV, Inc. 9826 Rembert Dr. Raleigh, NC 27612
John Rustin	NC Family Policy Council
Jessica Slagle	NC Family Policy Council
Jennifer Tolle Whitley	NC Child Fatality Task Force
Andrew Haile	Brooks Pierce Law Firm
John DeAngelis	Brooks Pierce McLendon Humphrey & Leonard, LLP

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
ANDREW HOLTON	SEN. GARROU'S OFFICE
BRIAN LEWIS	Covenant with NC's Children
Kyle Wallace	Time Warner Cable Govt Affairs
Jeffrey Dalton	Youth Advocacy and Involvement office
AL DEITCH	" " " "
Steve Shore	NC Pediatric Society
Kevin Mills	Senator Purcell's Office
CANADA VITALIS	Senator Katie Dorsett
Darion Rapoza	Entertainment Science Inc 5321 VENTURA DR DURHAM NC 27712
~~Matt Osborne~~	AOC
Vincent Stephenc	CMS

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Ted DANIEL	1317 Louisburg Rd, Wake Forest, NC 27587
Lorraine Blake	Self
Kathleen Purcell	
Gardner Payne	Edmisten & Webb
Patricia Jarvis	ACLL/FRLTC
Kathleen Edwards	UNC-CH Legis. Reporting Service
James Enerhart	Davidson Co CBA/ACATE NC Retreads Motorcycle Club
Chad Bomar	Wilson and Iseman LLP, Winston-Salem, NC
Allan Head	N.C. Bar Assoc.
Mike Colombo	N.C. Bar Assn
Bill Scoggin	KCLH

Senate Commerce Committee
Tuesday, April 19, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 2	No Violent/Obscene Video Game Sales to Minor.	Senator Boseman
SB 189	All-Terrain Vehicle Regulation.	Senator Purcell
SB 729	Clarify Used MV Interest Charges Under RISA.	Senator Hoyle
HB 752	NCSU Dairy Sales.-AB	Representative Hill

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 19, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 19, 2005, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Patrick Parker from Four Oaks, sponsored by Senator Fred Smith; Bret Davis from Wilmington, sponsored by Senator Julia Boseman; and Jessica Porter from Spring Lake, sponsored by Senator Harris Blake.

Senator Soles recognized Representative Dewey Hill to explain House Bill 752, NCSU Dairy Sales.-AB. Senator Richard Stevens moved for a favorable report of the bill. The motion carried.

Senator Soles recognized Senator Julia Boseman for further comments on Senate Bill 2, No Violent/Obscene Video Game Sales to Minor. Senator Vernon Malone moved an unfavorable report of the original bill, but favorable as to the committee substitute. Mr. Andy Ellen, representing the Retail Merchants, spoke against the bill, citing problems with the impossibility of determining if a particular video game was appropriate for children or not, the added expense to retailers of maintaining a separate area for "mature" games, and determining if preventing children from violence in video games would be constitutional. Rev. Mark Creech, representing the Christian Action League, reported that lawyers from his parent organization had determined that the bill had unconstitutional provisions in regard to violence. Senator Rand commented that the state should let the federal courts take a look at the law to determine whether or not it would be constitutional. Mr. Darion Rapoza, representing Entertainment Science, made the suggestion that the language of Section 2 (1)(c) be amended to add "health and social" to the list of values for minors. Senator Soles commented that there would be opportunities at other points in the process to make changes in the language. He called for a vote on Senator Malone's motion. The motion carried.

Senator Soles recognized Senator William Purcell to explain Senate Bill 189, All-Terrain Vehicle Regulation. He moved the adoption of a committee substitute for discussion purposes. The motion carried. The following people spoke on the bill:

- Dr. Tom Vitaglione, Co-Chair of the Child Fatality Task Force, spoke in favor of the committee substitute as it was.
- Dr. Peter Morris, President of the North Carolina Pediatric Society, spoke in favor of the committee substitute as it was.
- Ms. Kathy Van Kleeck, representing Specialty Vehicle Institute of America, spoke in favor of the bill with the exception that the organization she represented wants to reduce the age a young person can legally ride an ATV to six, with appropriate training and appropriate equipment.

- Mr. Chris Pierce, representing the North Carolina Motorcycle Dealers Association, echoed Ms. Van Kleeck's remarks.
- Ms. Nancy Minard, President of the North Carolina Off-Highway Vehicle Riders Association, agreed with the previous two speakers.
- Commissioner of Insurance Jim Long, representing North Carolina Safe Kids, agreed with the physicians.
- Mr. Jim Everhart, representing the Davidson County Concerned Bikers Association, spoke about his concern with the state assuming responsibility for education and the age limitation.
- Mr. Brian Lewis, representing Covenant with North Carolina's Children, endorsed the committee substitute, including the restrictions against children under the age of 12.

Senator Linda Garrou moved to amend the bill to restrict ATV's to young people 16 or over. The motion was defeated. Senator Soles announced the bill would be carried over to the next meeting.

The meeting adjourned at 12:00 noon.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 19, 2005

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

FAVORABLE

H.B. **752** NCSU Dairy Sales.-AB
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 19, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **2** No Violent/Obscene Video Game Sales to Minor.

Draft Number:	PCS 75289
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 752*

Short Title:	NCSU Dairy Sales.-AB	(Public)
Sponsors:	Representatives Hill; Brubaker, Ross, Alexander, Carney, Underhill, Weiss, and Williams.	
Referred to:	Agriculture.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM THE UMSTEAD ACT THE SALE BY NORTH CAROLINA STATE UNIVERSITY OF PRODUCTS PRODUCED BY THE DAIRY AND PROCESS APPLICATION LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(c) reads as rewritten:

"(c) The provisions of subsection (a) shall not prohibit:

...

(1b) The sale by North Carolina State University at University-owned facilities of dairy products, including ice cream, cheeses, milk-based beverages, and the by-products of heavy cream, produced by the Dairy and Process Applications Laboratory, so long as any profits are used to support the Department of Food Science and College of Agriculture and Life Sciences at North Carolina State University.

...."

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

HOUSE BILL 752:
NCSU Dairy Sales.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	April 19, 2005
Introduced by:	Rep. Hill	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 752 would exempt from the Umstead Act the sale of dairy products produced by the NCSU Dairy and Process Application Laboratory at University owned facilities.

CURRENT LAW: G.S. 66-58, known as the Umstead Act, prohibits the State and State agencies from operating commercial enterprises in competition with citizens of the State, unless the State agency or the specific commercial enterprise is exempt from the provisions of this statute. Currently at least 21 State agencies are exempt from this law and 19 activities of non-exempt agencies. See list of exempt activities attached.

BILL ANALYSIS: The bill would add to the list of activities not prohibited by the Umstead Act, the sale by NCSU at university-owned facilities of dairy products, including ice cream, cheeses, milk-based beverages, and by products of heavy cream, produced by the Dairy and Process Application Laboratory, provided that any profits from the sale of these products is used to support the Department of Food Science and the College of Agriculture and Life Sciences at NCSU.

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

§ 66-58. Sale of merchandise or services by governmental units.

(a) Except as may be provided in this section, it shall be unlawful for any unit, department or agency of the State government, or any division or subdivision of the unit, department or agency, or any individual employee or employees of the unit, department or agency in his, or her, or their capacity as employee or employees thereof, to engage directly or indirectly in the sale of goods, wares or merchandise in competition with citizens of the State, or to engage in the operation of restaurants, cafeterias or other eating places in any building owned by or leased in the name of the State, or to maintain service establishments for the rendering of services to the public ordinarily and customarily rendered by private enterprises, or to provide transportation services, or to contract with any person, firm or corporation for the operation or rendering of the businesses or services on behalf of the unit, department or agency, or to purchase for or sell to any person, firm or corporation any article of merchandise in competition with private enterprise. The leasing or subleasing of space in any building owned, leased or operated by any unit, department or agency or division or subdivision thereof of the State for the purpose of operating or rendering of any of the businesses or services herein referred to is hereby prohibited.

....

(c) The provisions of subsection (a) shall not prohibit:

(1) The sale of products of experiment stations or test farms.

(1a) The sale of products raised or produced incident to the operation of a community college viticulture/enology program as authorized by G.S. 18B-1114.4.

(2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.

(3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the

expenses of students attending the institution; provided, that the operation of the stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.

(3a) The use of community college personnel or facilities, with the consent of the trustees of that college, in support of or by a private business enterprise located on a community college campus or in the service area of a community college for one or more of the following specific services in support of economic development:

a. Small business incubators. – As used in this sub-subdivision, the term "small business incubators" means sites for new business ventures in the service area of the community college that are in need of the support and assistance provided by the college; and, without which, the likelihood of success of the business would be greatly diminished. The services of the small business incubator shall not extend to any such new business venture for a period of more than 24 months.

b. Product testing services.

c. Videoconferencing services provided to the public for occasional use.

(3b) The operation of a military business center by a community college. For the purposes of this subdivision, the term "military business center" means a facility that serves to coordinate and facilitate interactions between the United States Armed Forces; military personnel, veterans, and their families; and private businesses.

(4) The operation of lunch counters by the Department of Health and Human Services as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.

(5) The operation of a snack bar and cafeteria in the State Legislative Building, and a snack bar in the Legislative Office Building.

(6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.

(7) The operation by penal, correctional or facilities operated by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors.

(8) The sale by the Department of Agriculture and Consumer Services of livestock, poultry and publications in keeping with its present livestock and farm program.

(9) The operation by the public schools of school cafeterias.

(9a) The use of a public school bus or public school activity bus for a purpose allowed under G.S. 115C-242 or the use of a public school activity bus for a purpose authorized by G.S. 115C-247.

(9b) The use of a public school activity bus by a nonprofit corporation or a unit of local government to provide transportation services for school-aged and preschool-aged children, their caretakers, and their instructors to or from activities being held on the property of a nonprofit corporation or a unit of local government. The local board of education that owns

the bus shall ensure that the person driving the bus is licensed to operate the bus and that the lessee has adequate liability insurance to cover the use and operation of the leased bus.

(10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.

(11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.

(12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.

(13) The operation by the Department of Correction of forestry management programs on State-owned lands, including the sale on the open market of timber cut as a part of the management program.

(14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.

(15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.

(16) The performance by the Department of Transportation of dredging services for a unit of local government.

(17) The sale by the State Board of Elections to political committees and candidate committees of computer software designed by or for the State Board of Elections to provide a uniform system of electronic filing of the campaign finance reports required by Article 22A of Chapter 163 of the General Statutes and to facilitate the State Board's monitoring of compliance with that Article. This computer software for electronic filing of campaign finance reports shall not exceed a cost of one hundred dollars ($100.00) to any political committee or candidate committee without the State Board of Elections first notifying in writing the Joint Legislative Commission on Governmental Operations.

(18) The leasing of no more than 50 acres within the North Carolina Zoological Park by the Department of Environment and Natural Resources to the North Carolina Zoological Society for the maintenance or operation, pursuant to a contract or otherwise, of an exhibition center, theater, conference center, and associated restaurants and lodging facilities.

(19) The use of the North Carolina Museum of Art's conservation lab by the Regional Conservation Services Program of the North Carolina Museum of Art Foundation for the provision of conservation treatment services on privately owned works of art. However, when providing this service, the Regional Conservation Services Program shall give priority to publicly owned works of art.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 2
Corrected Copy 1/28/05
Corrected Copy 2/1/05

Short Title:	No Violent/Obscene Video Game Sales to Minor.	(Public)
Sponsors:	Senators Boseman, Rand; Albertson, Berger of Franklin, Clodfelter, Dalton, Dannelly, Garrou, Graham, Hagan, Holloman, Hoyle, Jenkins, Kerr, Lucas, Malone, Purcell, Snow, Soles, Swindell, Thomas, and Weinstein.	
Referred to:	Commerce.	

January 27, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENE AND GRAPHICALLY VIOLENT VIDEO GAMES TO MINORS AND TO REQUIRE VIDEO GAME RETAILERS TO INFORM CONSUMERS THAT A VIDEO GAME RATING SYSTEM IS AVAILABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; and G.S. 14-190.19, participating in prostitution of a minor.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is

patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, video games, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:

a. Masturbation, whether done alone or with another human or an animal.

b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.

c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.

d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state.

(7) Video Games. – An object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology."

SECTION 2. Article 39 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-317.1. Disseminating a graphically violent video game to a minor.**

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

(1) "Graphically violent" means the visual depiction of serious injury to human beings, actual or virtual, including aggravated assault, decapitation, dismemberment, or death.

(2) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(b) Offense. – It is unlawful for a person to sell, rent, or otherwise disseminate for consideration to a minor a graphically violent video game if the person knows the character or content of the video game.

(c) Penalty. – A violation of this section is a Class 1 misdemeanor.

"**§ 14-317.2. Video game retailer must inform customer that video game ratings are available.**

(a) The following definitions apply in this section:

(1) "Video game retailer" means a person who sells or rents video games to the public.

(2) "Video game" is as defined in G.S. 14-317.2(a)(2).

(b) Every video game retailer shall post a sign providing information to consumers about a video game rating system or notifying consumers that a rating system is available to aid in the selection of a game. The sign shall be posted within the retail establishment in a prominent area.

(c) A video game retailer shall make available to consumers, upon request, information that explains the video game rating system."

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 4. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 2:
No Violent/Obscene Video Game Sales to Minor

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senators Boseman and Rand
Date:	April 12, 2005	**Summary by:**	Wendy Graf Ray
Version:	S2-CSSU-4[v.6]		Committee Counsel

SUMMARY: ***Senate Bill 2 would prohibit the dissemination of sexually explicit and graphically violent video games to minors; require video game retailers and arcades to provide separate viewing areas for graphically violent video games and to inform customers of rating systems for video games; and require labeling of graphically violent video games.***

CURRENT LAW: Current law prohibits disseminating to minors material that is harmful to minors, but "harmful to minors" only includes material that depicts sexually explicit nudity or sexual activity, and "material" does not include video games. North Carolina law does not currently restrict minors' access to video games.

BILL ANALYSIS: Senate Bill 2 would restrict minors' access to certain video games and require notice to consumers of the content of video games as follows:

Dissemination of sexually explicit video games. Section 1 of the bill would add video games to the list of sexually explicit materials that may not be displayed or distributed to minors under existing law.

Dissemination of graphically violent video games. Section 2 of the bill would prohibit disseminating to a minor video games that are harmful to minors, and "harmful to minors" is defined as a video game that depicts graphic violence and has the following characteristics:

- The average adult applying contemporary community standards would find that the depiction has a predominant tendency to appeal to a morbid interest of minors in violence; and
- The average adult applying contemporary community standards would find that the depiction is patently offensive to prevailing standards of what is suitable for minors; and
- The video game lacks serious literary, artistic, political, or scientific value for minors.

Violation would be a Class 1 misdemeanor, but it would be a defense that the person was the parent or guardian of the minor, the person requested and received evidence of identification indicating that the minor was at least 18, or that the dissemination was made with prior consent of the parent or guardian.

Separate viewing area for graphically violent video games. Section 2 would require that video game retailers and video arcades create separate areas for placement of graphically violent video games that are not open to view by minors.

Violation would be a Class 2 misdemeanor, and each day the person is in violation would be a separate offense.

Notice to customer of video game ratings. Section 2 would also require that video game retailers and video arcades post signs in a prominent area to notify customers of any rating system available to aid in the selection of a game. Information about the rating system would have to be made available to customers upon request.

Violation would be a Class 3 misdemeanor.

Labeling of graphically violent video games. Section 3 of the bill would require that video games sold or rented by video game retailers or operated in video arcades be labeled with an accurate description of the type of violence portrayed in the video game. If the video game is rated, information explaining the rating system would also have to be made available upon request.

Violation would be an unfair practice under G.S. 75-1.1 for which a court could impose a civil penalty up to $5,000 for each violation.

Severability. Section 4 of the bill provides that if any provision of the act is found to be invalid, it would not affect the validity of any other provision.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 2

Corrected Copy 1/28/05

Corrected Copy 2/1/05

PROPOSED COMMITTEE SUBSTITUTE S2-CSSU-4 [v.6]

4/11/2005 5:34:35 PM

Short Title: No Violent/Obscene Video Game Sales to Minor. (Public)

Sponsors:

Referred to:

January 27, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENE AND GRAPHICALLY VIOLENT VIDEO GAMES TO MINORS AND TO REQUIRE VIDEO GAME RETAILERS TO INFORM CONSUMERS THAT A VIDEO GAME RATING SYSTEM IS AVAILABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; and G.S. 14-190.19, participating in prostitution of a minor.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, video games, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:

a. Masturbation, whether done alone or with another human or an animal.

b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.

c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.

d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state.

(7) Video Game. – An object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology."

SECTION 2. Article 39 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-317.1. Definitions for certain offenses concerning video games.**

The following definitions apply to G.S. 14-317.2, disseminating to a minor a video game that is harmful to minors; G.S. 14-317.3, video games that are harmful to minors

shall be located in an area not open to view by minors; and G.S. 14-317.4, video game retailer and video arcade must inform customer that video game ratings are available.

(1) Graphic violence. – The realistic visual depiction of serious injury to human beings, actual or virtual, including aggravated assault, decapitation, dismemberment, or death.

(2) Harmful to minors. – That quality of any video game that depicts graphic violence and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the depiction of graphic violence in the video game has a predominant tendency to appeal to a morbid interest of minors in violence; and

b. The average adult person applying contemporary community standards would find that the depiction of graphic violence in the video game is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The video game lacks serious literary, artistic, political, or scientific value for minors.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Video arcade. – Any premises where minors are legally permitted to conduct business and ten or more video game machines or devices are operated.

(5) Video game. – An object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(6) Video game retailer. – Any person who sells or rents video games to the public.

"**§ 14-317.2. Disseminating to a minor a video game that is harmful to minors.**

(a) Offense. – It is unlawful for a person to do any of the following:

(1) Sell, rent, or otherwise disseminate for consideration to a minor a video game that is harmful to minors if the person knows the character or content of the video game.

(2) Allow a minor for consideration to operate a video game that is harmful to minors in a video arcade if the person knows the character or content of the video game.

(b) Defenses. – Except as provided in subdivision (2) of this subsection, a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

(1) The person was a parent or legal guardian of the minor.

(2) Before the dissemination, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the video game was disseminated was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.

(3) The dissemination was made with the prior consent of a parent or guardian of the recipient.

(c) Penalty. – A violation of this section is a Class 1 misdemeanor.

"**§ 14-317.3. Video games that are harmful to minors shall be located in an area not open to view by minors.**

(a) Video game retailer must provide separate viewing area for video games that are harmful to minors. – A video game retailer who sells or rents video games that are harmful to minors shall create an area within the retailer's business establishment that is not open to view by minors for the placement of the video games and for any material that advertises the sale or rental of the video games. The area shall be labeled `adults only'.

(b) Video arcade must provide separate viewing area for video games that are harmful to minors. – Any person who has custody, control, or supervision of a video arcade that includes video games that are harmful to minors as a selection on its video game machines or devices shall create an area within the arcade that is not open to view by minors for the placement of the video games and for any material that advertises the video games. The area shall be labeled `adults only'.

(c) Penalty. – A violation of this section is a Class 2 misdemeanor. Each day's violation of this section is a separate offense."

"**§ 14-317.4. Video game retailer and video arcade must inform customer that video game ratings are available.**

(a) Notification that video game rating system is available. – Every video game retailer and every person who has custody, control, or supervision of a video arcade shall post a sign that notifies consumers of any rating system created by the video gaming industry that is available to aid in the selection of a game. The sign shall be posted within the retail establishment or video arcade in a prominent area.

(b) Duty to provide video game rating system upon request. – A video game retailer or a person who has custody, control, or supervision of a video arcade shall make available to consumers, upon request, the video game rating system and information that explains the video game rating system.

(c) Penalty. – A violation of this section is a Class 3 misdemeanor.

SECTION 3. Chapter 66 of the General Statutes is amended by adding a new article to read:

"Article 41.

Video Games

"**§ 66-340. Labeling required for graphically violent video games; notification of video game rating system.**

(a) Definitions. – The following definitions apply to this article.

(1) "Graphic violence" is as defined in G.S. 14-317.1(1).
(2) "Video arcade" is as defined in G.S. 14-317.1(4).
(3) "Video game" is as defined in G.S. 14-317.1(5).
(4) "Video game retailer" is as defined in G.S. 14-317.1(6).

(b) Video games that contain graphic violence must be labeled. – It is unlawful for a video retailer to sell or rent any video game that contains graphic violence unless the cover of the video game displays a label that accurately describes the type of violence portrayed in the video. If the video game is rated, then the video retailer shall also provide, upon request, the information that explains the game rating system and identifies the sponsors of the game rating system.

(c) Video games in video arcades that contain graphic violence must be labeled. – It is unlawful to allow the operation of any video game in a video arcade that contains graphic violence unless the video game displays a label that accurately describes the type of violence portrayed in the video game. If the video game is rated, then the person who has custody, control, or supervision of the video arcade shall also provide, upon request, the information that explains the game rating system and identifies the sponsors of the game rating system.

(d) Violation is an unfair practice. – A violation of this section shall constitute an unfair practice under G.S. 75-1.1."

SECTION 4. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

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

S D

SENATE BILL 2
Corrected Copy 1/28/05
Corrected Copy 2/1/05
PROPOSED COMMITTEE SUBSTITUTE S2-PCS75289-SU-4

Short Title: No Violent/Obscene Video Game Sales to Minor. (Public)

Sponsors:

Referred to:

January 27, 2005

A BILL TO BE ENTITLED

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b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

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(2) Material. – Pictures, drawings, video recordings, video games, films or other visual depictions or representations but not material consisting entirely of written words.

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a. Masturbation, whether done alone or with another human or an animal.

b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.

c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.

d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state.

(7) Video game. – An object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology."

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(1) Graphic violence. – The realistic visual depiction of serious injury to human beings, actual or virtual, including aggravated assault, decapitation, dismemberment, or death.

(2) Harmful to minors. – That quality of any video game that depicts graphic violence and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the depiction of graphic violence in the video game has a predominant tendency to appeal to a morbid interest of minors in violence; and

b. The average adult person applying contemporary community standards would find that the depiction of graphic violence in the video game is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

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(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Video arcade. – Any premises where minors are legally permitted to conduct business and 10 or more video game machines or devices are operated.

(5) Video game. – An object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(6) Video game retailer. – Any person who sells or rents video games to the public.

"**§ 14-317.2. Disseminating to a minor a video game that is harmful to minors.**

(a) Offense. – It is unlawful for a person to do any of the following:

(1) Sell, rent, or otherwise disseminate for consideration to a minor a video game that is harmful to minors if the person knows the character or content of the video game.

(2) Allow a minor for consideration to operate a video game that is harmful to minors in a video arcade if the person knows the character or content of the video game.

(b) Defenses. – Except as provided in subdivision (2) of this subsection, a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

(1) The person was a parent or legal guardian of the minor.

(2) Before the dissemination, the defendant requested and received a drivers license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the video game was disseminated was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.

(3) The dissemination was made with the prior consent of a parent or guardian of the recipient.

(c) Penalty. – A violation of this section is a Class 1 misdemeanor.

"§ 14-317.3. Video games that are harmful to minors shall be located in an area not open to view by minors.

(a) Video Game Retailer Must Provide Separate Viewing Area for Video Games That Are Harmful to Minors. – A video game retailer who sells or rents video games that are harmful to minors shall create an area within the retailer's business establishment that is not open to view by minors for the placement of the video games and for any material that advertises the sale or rental of the video games. The area shall be labeled 'adults only'.

(b) Video Arcade Must Provide Separate Viewing Area for Video Games That Are Harmful to Minors. – Any person who has custody, control, or supervision of a video arcade that includes video games that are harmful to minors as a selection on its video game machines or devices shall create an area within the arcade that is not open to view by minors for the placement of the video games and for any material that advertises the video games. The area shall be labeled 'adults only'.

(c) Penalty. – A violation of this section is a Class 2 misdemeanor. Each day's violation of this section is a separate offense.

"§ 14-317.4. Video game retailer and video arcade must inform customer that video game ratings are available.

(a) Notification That Video Game Rating System Is Available. – Every video game retailer and every person who has custody, control, or supervision of a video arcade shall post a sign that notifies consumers of any rating system created by the video gaming industry that is available to aid in the selection of a game. The sign shall be posted within the retail establishment or video arcade in a prominent area.

(b) Duty to Provide Video Game Rating System Upon Request. – A video game retailer or a person who has custody, control, or supervision of a video arcade shall make available to consumers, upon request, the video game rating system and information that explains the video game rating system.

(c) Penalty. – A violation of this section is a Class 3 misdemeanor."

SECTION 3. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 41.

"Video Games.

"§ 66-340. Labeling required for graphically violent video games; notification of video game rating system.

(a) Definitions. – The following definitions apply to this Article:

(1) "Graphic violence" is as defined in G.S. 14-317.1(1).
(2) "Video arcade" is as defined in G.S. 14-317.1(4).
(3) "Video game" is as defined in G.S. 14-317.1(5).
(4) "Video game retailer" is as defined in G.S. 14-317.1(6).

(b) Video Games That Contain Graphic Violence Must Be Labeled. – It is unlawful for a video game retailer to sell or rent any video game that contains graphic violence unless the cover of the video game displays a label that accurately describes the type of violence portrayed in the video. If the video game is rated, then the video game retailer shall also provide, upon request, the information that explains the game rating system and identifies the sponsors of the video game rating system.

(c) Video Games in Video Arcades That Contain Graphic Violence Must Be Labeled. – It is unlawful to allow the operation of any video game in a video arcade that contains graphic violence unless the video game displays a label that accurately describes the type of violence portrayed in the video game. If the video game is rated, then the person who has custody, control, or supervision of the video arcade shall also provide, upon request, the information that explains the video game rating system and identifies the sponsors of the video game rating system.

(d) Violation Is an Unfair Practice. – A violation of this section shall constitute an unfair practice under G.S. 75-1.1."

SECTION 4. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

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

S 1

SENATE BILL 189

Short Title:	All-Terrain Vehicle Regulation.	(Public)
Sponsors:	Senators Purcell; Allran, Bingham, Dannelly, Dorsett, and Kinnaird.	
Referred to:	Commerce.	

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE SALES AND OPERATIONS OF ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. – Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

~~(1c)~~(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation."

SECTION 2. Article 3 of Chapter 20 is amended by adding a new Part to read:

"Part 10C. Operation of All-Terrain Vehicles.

"**§ 20-171.10. Age restrictions.**

(a) No person less than 12 years of age shall operate an all-terrain vehicle.

(b) All-terrain vehicles with engine capacity up to and including 90 cubic centimeter displacement shall be operated only by persons 12 years of age or older.

(c) All-terrain vehicles with engine capacity greater than 90 cubic centimeter displacement shall be operated only by persons 16 years of age or older.

(d) All persons under the age of 16 shall be under the continuous supervision of a person 18 years of age or older while operating an all-terrain vehicle.

"**§ 20-171.11. Passengers.**

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

"**§ 20-171.12. Prohibited acts by sellers.**

No person shall knowingly sell or offer to sell an all-terrain vehicle:

(1) For use by a person under the age of 12 years.

(2) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age.

"**§ 20-171.13. Equipment requirements.**

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition.

(4) When operated during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at any time when visibility is reduced due to insufficient light or atmospheric conditions, it shall display a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws like those prohibiting the use of lamps when hunting at night.

"**§ 20-171.14. Prohibited acts by owners and operators.**

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(b) No owner shall authorize or permit an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) No person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) No person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

"**§ 20-171.15. Safety training and certificate.**

(a) On or before May 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute.

(b) On or before October 1, 2006, every all-terrain operator shall possess the safety certificate required by subsection (a) of this section.

"**§ 20-171.16. Penalties.**

(a) Any person violating the provisions of G.S. 20-171.10, 20-171.12, or 20-171.14(e) or (f) shall be guilty of a Class 2 misdemeanor and may be subject to a fine of not more than one thousand dollars ($1,000) for each violation.

(b) Any person violating any other provision of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00)."

SECTION 3. This act becomes effective October 1, 2005.

SENATE BILL 189:
All-Terrain Vehicle Regulation

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Purcell
Date:	April 12, 2005	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 189 would provide regulations for the sale and operation of all-terrain vehicles (ATVs) in North Carolina.

CURRENT LAW: North Carolina does not currently regulate the sale and operation of all-terrain vehicles. All-terrain vehicles are not required to be registered, and operators do not have to be licensed.

BILL ANALYSIS: Senate Bill 189 would regulate all-terrain vehicles in the following ways:

Definition. The bill would define ATV as a motorized off-highway vehicle designed to travel on 3 or 4 low-pressure tires with a seat designed to be straddled and handlebars for steering.

Age restrictions.

- No one under age 12 would be permitted to operate an ATV.
- Children between the ages of 12 and 15 would only be permitted to operate ATVs with engine capacity up to and including 90 cubic centimeter displacement and only with supervision of a person who is 18 or older.
- Only persons who are 16 or older would be permitted to operate an ATV with engine capacity greater than 90 cubic centimeter displacement.

Violation of age restrictions would be a Class 2 misdemeanor (punishable up to 60 days, fine up to $1,000). Selling an ATV for use in violation of age restrictions would also be a Class 2 misdemeanor.

Passengers. Operators of ATVs would not be permitted to carry passengers unless the ATV was specifically designed to carry passengers.

Violation of the passenger restriction would be an infraction (fine up to $200).

Equipment requirements. Every ATV sold or operated in the State would be required to meet the following equipment standards:

- Be equipped with a brake system.
- Be equipped with an effective muffler system.
- Be equipped with a spark arrester.
- Display a lighted headlamp and taillamp during hours of darkness.

Violation of equipment requirements would be an infraction (fine up to $200).

Prohibited acts (infractions). Owners and operators of ATVs would be prohibited from doing any of the following:

- Operating an ATV without eye protection and a helmet.
- Authorizing use of an ATV contrary to the provisions in this bill.

- Operating an ATV while under the influence of drugs or alcohol.
- Operating an ATV in a careless and reckless manner so as to endanger persons or property.

Violation of these restrictions would be an infraction (fine up to $200).

Prohibited acts (misdemeanors). Owners and operators of ATVs would also be prohibited from the following:

- Operating an ATV on a public street, road, or highway, except to cross.
- Operating an ATV on an interstate or limited-access highway.

Violation of these restrictions would be a Class 2 misdemeanor (punishable up to 60 days, fine up to $1,000).

Safety training. All operators of ATVs would be required to possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute. Younger operators would be required to complete the course first. Any operator born on or after January 1, 1990 would be required to possess the certificate by May 1, 2006. All other operators would be required to possess the certificate by October 1, 2006.

Violation of this requirement would be an infraction (fine up to $200).

EFFECTIVE DATE: The act would become effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 189
PROPOSED COMMITTEE SUBSTITUTE S189-CSLK-13 [v.1]

Short Title: All-Terrain Vehicle Regulation. (Public)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE SALES AND OPERATIONS OF ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. – Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

~~(1c)~~(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation."

SECTION 2. Article 3 of Chapter 20 is amended by adding a new Part to read:

"Part 10C. Operation of All-Terrain Vehicles.

"**§ 20-171.10. Age restrictions.**

(a) No person less than 12 years of age shall operate an all-terrain vehicle.

(b) All-terrain vehicles with engine capacity up to and including 90 cubic centimeter displacement shall be operated only by persons 12 years of age or older.

(c) All-terrain vehicles with engine capacity greater than 90 cubic centimeter displacement shall be operated only by persons 16 years of age or older.

(d) All persons under the age of 16 shall be under the continuous supervision of a person 18 years of age or older while operating an all-terrain vehicle.

"**§ 20-171.11. Passengers.**

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

"**§ 20-171.12. Prohibited acts by sellers.**

No person shall knowingly sell or offer to sell an all-terrain vehicle:

(1) For use by a person under the age of 12 years.

(2) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age.

"**§ 20-171.13. Equipment requirements.**

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition.

(4) When operated during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at any time when visibility is reduced due to insufficient light or atmospheric conditions, it shall display a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws like those prohibiting the use of lamps when hunting at night.

"**§ 20-171.14. Prohibited acts by owners and operators.**

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(b) No owner shall authorize or permit an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) With the exception of governmental agencies, no person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) With the exception of governmental agencies, no person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

"**§ 20-171.15. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute.

"**§ 20-171.16. Penalties.**

(a) Any person violating the provisions of G.S. 20-171.10, 20-171.12, or 20-171.14(e) or (f) shall be guilty of a Class 2 misdemeanor and may be subject to a fine of not more than one thousand dollars ($1,000) for each violation.

(b) Any person violating any other provision of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00)."

SECTION 3. This act becomes effective October 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/19/05

S. B. No. 189 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S189-CSLK-13

Rep.)
) Garrou
Sen.)

moves to amend the bill on page 2, line 5 1-7

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"No person less than 16 years of age shall operate an all-terrain vehicle"; and

on page 2, lines 13-16,

by rewriting the lines to read:

"No person shall knowingly sell or offer to sell an all-terrain vehicle for use by a person less than 16 years of age."

SIGNED Linda Garrou

ADOPTED _____ FAILED ✓ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

COMMERCE
Name of Committee

4/19/05
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	Gov Office
Suzanne Brewer	Gov office
[illegible]	NCJC
Nancy Reed	SELF
Jennifer Tolle Whiteside	Child Fatality Task Force
Peter J Morris	NC Pediatric Society
Kathy VanKleeck	Specialty Vehicle Institute of America
Tom Vaughn	NCCAT
Andy Ellen	NCRMA
Fran Preston	NCRMA
SAM JOHNSON	ATTY
Dawn Mapa	Entertainment Science
Nancy Minard	N.C. Off highway Vehicle Assoc, Inc.
Chris Pierce	N.C Motorcycle Dealers Assn.
Marla Darrel	NC child Fatality Task Force
Steve Shore	NC Pediatric Society
Brad Lamb	NC Consumers Council
Jeff Medlin	YAIO
Dick Colton	attorney
Gary Isenhour	Sen. P. Berger's office
Lorraine Blake	Self
David STOLLER	STATE FARM
Ken Melton	D.O.R.
JOHN GOODMAN	ALLEY ASSOCIATES
DAVID BARNES	Poyner + Spruill
STEPHEN W. KEENE	NC MEDICAL SOCIETY

VISITOR REGISTRATION SHEET

Commerce
[redacted] COMMITTEE
Name of Committee

4-19-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	NC Bar Assoc.
Martha A. McConnell	Carolinas HealthCare System
Steve Woodson	NC Farm Bureau
[signature]	NCAOP
Amy Hobbs	Hobbs & Co
THOM ILES	JOHN DEERE
CAL	MARK H. CREECH
[signature]	[signature]
Anne Jo Horne	NCMS
Don McConaughey	SAS
[signature]	TWC
Jim Everhart	DAVIDSON CO CBA/ABATE AND NC RETREADS MYC
Kathleen Edwards	UNC-CH Legislative Reporting Service

Name	Firm or Agency
Bill Coggin	KCCA
Andrew Holton	Sen. Garrou's office
Stephen Simpson	NCAR
Colleen Kochanek	Holt York McDaris + High
Clw Kulla	Ctr for Resp Lending
Michael Wagner	Fayetteville Observer
Bill Rowe	NC Insider
Jen Allen	Jeffrey Gruver
Courtney A Crowder	NC DOI
Mike Moore	NECA
[illegible]	NCMSA
[illegible]	BST
[illegible]	NCLM

Senate Commerce Committee
Tuesday, April 26, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 189	All-Terrain Vehicle Regulation.	Senator Purcell
SB 441	Ashe Co./ Wind-Powered Generation.	Senator Garwood
SB 664	Small Business Regulatory Improvement Act.	Senator Hartsell
SB 947	Regulate Deferred Deposits.	Senator Hoyle

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 26, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 26, 2005, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Peter Coogan from Wake County, sponsored by Senator Neal Hunt; and Kristen Royal from Salemburg, sponsored by Senator Charlie Albertson.

Senator Soles announced that Senator Garwood had requested his bill, SB 441, Ashe Co./Wind-Powered Generation, be removed from today's agenda. He further announced that Senator David Hoyle was unavailable today, so SB 947, Regulate Deferred Deposits, was also removed from the agenda.

Senator Soles recognized Senator William Purcell to comment on Senate Bill 189, All-Terrain Vehicle Regulation. Senator Vernon Malone moved the adoption of a second committee substitute for discussion purposes. The motion carried. Senator Purcell asked Wendy Ray to describe the changes in the committee substitute from the substitute discussed at the previous meeting. Senator Doug Berger sent forward Amendment #1 to the bill and moved its adoption. The amendment would allow children over the age of 6 to ride age-appropriate all-terrain vehicles. Senator Purcell spoke against the motion. He called on Dr. Brent Myers, Medical Director for EMS Service in Wake County and Chair of the North Carolina College of Emergency Physicians EMS Committee; and Dr. Robert Schafermeyer, Past President of the National American College of Emergency Physicians, a national expert in pediatric emergency medicine and emergency medicine, who spoke against the amendment. The motion failed. Senator Purcell moved the original bill be given an unfavorable report, but the committee substitute adopted at today's meeting be given a favorable report. The motion carried.

Senator Soles recognized Senator Fletcher Hartsell to explain Senate Bill 664, Small Business Regulatory Improvement Act. Senator Keith Presnell moved the adoption of a committee substitute for discussion purposes. Senator Hartsell explained the provisions of the bill. He asked that Mr. Patrick Gartland, S.E. Regional Advocate, Office of Advocacy, U.S. Small Business Administration, be allowed to speak. Mr. Gartland spoke in favor of the legislation. Senator Tom Apodaca sent forth an amendment and moved its adoption. The amendment added an appropriation for the Department of Commerce to support the regulatory committee that would be established under the legislation. The motion carried. Senator Jim Jacumin moved an unfavorable report of the bill, but favorable as to the committee substitute as amended and engrossed into a new committee substitute, with a referral to the Appropriations/Base Budget Committee. The motion carried.

The meeting adjourned at 12:00 noon.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, April 27, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **189** All-Terrain Vehicle Regulation.

Draft Number:	PCS 55216
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **664** Small Business Regulatory Improvement Act.

Draft Number:	PCS 75298
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 189

Short Title:	All-Terrain Vehicle Regulation.	(Public)
Sponsors:	Senators Purcell; Allran, Bingham, Dannelly, Dorsett, and Kinnaird.	
Referred to:	Commerce.	

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(b) On or before October 1, 2006, every all-terrain operator shall possess the safety certificate required by subsection (a) of this section.

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(a) Any person violating the provisions of G.S. 20-171.10, 20-171.12, or 20-171.14(e) or (f) shall be guilty of a Class 2 misdemeanor and may be subject to a fine of not more than one thousand dollars ($1,000) for each violation.

(b) Any person violating any other provision of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00)."

SECTION 3. This act becomes effective October 1, 2005.

SENATE BILL 189:
All-Terrain Vehicle Regulation

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Purcell
Date:	April 26, 2005	**Summary by:**	Wendy Graf Ray
Version:	Proposed Commmittee Substitute S189-CSSU-7[v.1]		Committee Counsel

SUMMARY: Senate Bill 189 would provide regulations for the sale and operation of all-terrain vehicles (ATVs) in North Carolina.

CURRENT LAW: North Carolina does not currently regulate the sale and operation of all-terrain vehicles. All-terrain vehicles are not required to be registered, and operators do not have to be licensed.

BILL ANALYSIS: Senate Bill 189 would regulate all-terrain vehicles in the following ways:

Definition. The bill would define ATV as a motorized off-highway vehicle designed to travel on 3 or 4 low-pressure tires with a seat designed to be straddled and handlebars for steering.

Age restrictions.

- No one under age 12 would be permitted to operate an ATV.
- Children between the ages of 12 and 15 would only be permitted to operate ATVs with engine capacity up to and including 90 cubic centimeter displacement and only with supervision of a person who is 18 or older.
- Only persons who are 16 or older would be permitted to operate an ATV with engine capacity greater than 90 cubic centimeter displacement.

Violation of age restrictions would be a Class 2 misdemeanor (punishable up to 60 days, fine up to $1,000). Selling an ATV for use in violation of age restrictions would also be a Class 2 misdemeanor.

Passengers. Operators of ATVs would not be permitted to carry passengers unless the ATV was specifically designed to carry passengers.

Violation of the passenger restriction would be an infraction (fine up to $200).

Equipment requirements. Every ATV sold or operated in the State would be required to meet the following equipment standards:

- Be equipped with a brake system.
- Be equipped with an effective muffler system.
- Be equipped with a spark arrester.

Violation of equipment requirements would be an infraction (fine up to $200).

Prohibited acts (infractions). Owners and operators of ATVs would be prohibited from doing any of the following:

- Operating an ATV without eye protection and a helmet.
- Authorizing use of an ATV contrary to the provisions in this bill.

- Operating an ATV while under the influence of drugs or alcohol.
- Operating an ATV in a careless and reckless manner so as to endanger persons or property.
- Operating an ATV during hours of darkness without displaying a lighted headlamp and taillamp.

Violation of these restrictions would be an infraction (fine up to $200).

Prohibited acts (misdemeanors). Owners and operators of ATVs would also be prohibited from the following:

- Operating an ATV on a public street, road, or highway, except to cross.
- Operating an ATV on an interstate or limited-access highway.

Violation of these restrictions would be a Class 2 misdemeanor (punishable up to 60 days, fine up to $1,000).

Safety training. All operators of ATVs who were born on or after January 1, 1990 would be required to possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute. This requirement would be effective October 1, 2006.

Violation of this requirement would be an infraction (fine up to $200).

EFFECTIVE DATE: The act would become effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 189
PROPOSED COMMITTEE SUBSTITUTE S189-CSSU-7 [v.1]

4/25/2005 11:52:47 AM

Short Title: All-Terrain Vehicle Regulation. (Public)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE SALES AND OPERATIONS OF ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. – Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

~~(1c)~~(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation.

..."

SECTION 2. Article 3 of Chapter 20 is amended by adding a new Part to read:

"Part 10C. Operation of All-Terrain Vehicles.

"**§ 20-171.10. Age restrictions.**

(a) No person less than 12 years of age shall operate an all-terrain vehicle.

(b) All-terrain vehicles with engine capacity up to and including 90 cubic centimeter displacement shall be operated only by persons 12 years of age or older.

(c) All-terrain vehicles with engine capacity greater than 90 cubic centimeter displacement shall be operated only by persons 16 years of age or older.

(d) All persons under the age of 16 shall be under the continuous visual supervision of a person 18 years of age or older while operating an all-terrain vehicle.

"**§ 20-171.11. Passengers.**

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

"**§ 20-171.12. Prohibited acts by sellers.**

No person shall knowingly sell or offer to sell an all-terrain vehicle:

(1) For use by a person under the age of 12 years.

(2) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age.

"**§ 20-171.13. Equipment requirements.**

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition.

"**§ 20-171.14. Prohibited acts by owners and operators.**

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(b) No owner shall authorize an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

(g) No person shall operate an all-terrain vehicle during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at any time when

visibility is reduced due to insufficient light or atmospheric conditions, without displaying a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws.

"**§ 20-171.15. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute.

"**§ 20-171.16. Penalties.**

(a) Any person violating the provisions of G.S. 20-171.10, 20-171.12, or 20-171.14(e) or (f) shall be guilty of a Class 2 misdemeanor.

(b) Any person violating any other provision of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00)."

SECTION 3. This act becomes effective October 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 189

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S189-ASU-7 [v.3]

Date April 26 ,2005

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

Senator _____

moves to amend the bill on page 2, line 2, by rewriting the line to read:

"(a) No person less than 6 years of age shall operate an all-terrain vehicle.

(b) All-terrain vehicles with engine capacity less than 70 cubic centimeter displacement shall be operated only by persons who are 6 years of age or older."; and

by relettering the remaining subsections; and

on page 2, line 15, by rewriting the line to read:

"(1) For use by a person under the age of 6 years.

(2) With an engine capacity of 70 cubic centimeter displacement or greater for use by a person less than 12 years of age."; and

by renumbering the remaining subdivision.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 189
PROPOSED COMMITTEE SUBSTITUTE S189-PCS55216-SU-7

Short Title: All-Terrain Vehicle Regulation. (Public)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE SALES AND OPERATIONS OF ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

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(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

~~(1c)~~(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation.

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SECTION 2. Article 3 of Chapter 20 is amended by adding a new Part to read:

"Part 10C. Operation of All-Terrain Vehicles.

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(b) All-terrain vehicles with engine capacity up to and including 90 cubic centimeter displacement shall be operated only by persons 12 years of age or older.

(c) All-terrain vehicles with engine capacity greater than 90 cubic centimeter displacement shall be operated only by persons 16 years of age or older.

(d) All persons under the age of 16 shall be under the continuous visual supervision of a person 18 years of age or older while operating an all-terrain vehicle.

"**§ 20-171.11. Passengers.**

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

"**§ 20-171.12. Prohibited acts by sellers.**

No person shall knowingly sell or offer to sell an all-terrain vehicle:

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(2) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age.

"**§ 20-171.13. Equipment requirements.**

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition.

"**§ 20-171.14. Prohibited acts by owners and operators.**

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(b) No owner shall authorize an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

(g) No person shall operate an all-terrain vehicle during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at anytime when

visibility is reduced due to insufficient light or atmospheric conditions, without displaying a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws.

"**§ 20-171.15. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute.

"**§ 20-171.16. Penalties.**

(a) Any person violating the provisions of G.S. 20-171.10, 20-171.12, or 20-171.14(e) or (f) shall be guilty of a Class 2 misdemeanor.

(b) Any person violating any other provision of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00)."

SECTION 3. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 664*

Short Title:	Small Business Regulatory Improvement Act.	(Public)
Sponsors:	Senators Hartsell and Hoyle.	
Referred to:	Commerce.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE STATE AGENCIES PROPOSING PERMANENT RULES TO CONSIDER THE ADVERSE ECONOMIC IMPACT OF THE PROPOSED RULE ON SMALL BUSINESS; TO REQUIRE STATE AGENCY REVIEW OF EXISTING RULES PRIOR TO AMENDMENT TO DETERMINE THE IMPACT ON SMALL BUSINESS; TO ESTABLISH THE SMALL BUSINESS REGULATORY COMMITTEE IN THE DEPARTMENT OF COMMERCE; TO PROVIDE FOR SMALL BUSINESS REGULATORY COMMITTEE REVIEW OF PROPOSED PERMANENT RULES THAT MAY HAVE AN ADVERSE IMPACT ON SMALL BUSINESS AND SMALL BUSINESS REGULATORY COMMITTEE RECOMMENDATIONS TO THE AGENCY AND GENERAL ASSEMBLY; TO AUTHORIZE PETITION BY A SMALL BUSINESS OBJECTING TO A PERMANENT RULE ON SPECIFIED GROUNDS; PROVIDING FOR SMALL BUSINESS REGULATORY COMMITTEE REVIEW OF THE AGENCY'S RESPONSE TO THE PETITION; AND AUTHORIZING AGENCY WAIVER OF ADMINISTRATIVE FINES OR PENALTIES FOR VIOLATIONS BY SMALL BUSINESS.

Whereas, a vibrant and growing small business sector is critical to creating jobs in a dynamic economy; and

Whereas, small businesses bear a disproportionate share of regulatory costs and burdens; and

Whereas, fundamental changes that are needed in the regulatory and enforcement culture of State agencies to make them more responsive to small business can be made without compromising the statutory mission of the agency; and

Whereas, uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses with limited resources; and

Whereas, unnecessary rules create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes; and

Whereas, alternative regulatory approaches that do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 150B of the General Statutes is amended by adding the following new Part to read:

"Part 2A. Small Business Regulatory Improvement Act.

"**§ 150B-21.7A. Findings; definitions.**

(a) The General Assembly finds the following:

(1) A uniform system for administrative rule making and adjudicatory process is necessary to ensure that rules to protect the health, safety, and economic welfare of the State are adopted and enforced in an open, fair, and equitable manner.

(2) In adopting and enforcing administrative rules, State agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on employers.

(3) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity.

(4) The practice of treating all regulated businesses as equal may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation.

(b) As used in this Part, the term:

(1) 'Adverse economic impact' means an aggregate financial impact on small businesses affected by the rule of at least two million dollars ($2,000,000) in a 12-month period.

(2) 'Committee' means the Small Business Regulatory Committee established under G.S. 143B-472.99.

(3) 'Small business' means a business entity, including its affiliates, that is both independently owned and operated and has not more than 250 employees.

"**§ 150B-21.7B. Rules affecting small businesses; economic impact statement by agency; judicial review of agency compliance.**

(a) Before an agency publishes in the North Carolina Register the proposed text of a permanent rule that would have an adverse economic impact on small businesses, the agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of small businesses subject to the proposed rule.

(2) The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.
(3) A statement of the probable effect on impacted small businesses.
(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

(b) A small business that is adversely affected or aggrieved by the adoption of a permanent rule subject to this section may seek judicial review of the agency's compliance with this section. The small business may seek judicial review under this subsection during the period commencing on the date the permanent rule becomes effective and end one year from that date.

"**§ 150B-21.7C. Agency review of existing rules.**

In order to minimize the adverse economic impact on small businesses, prior to amending a permanent rule, the agency shall consider the following:

(1) The continued need for the rule.
(2) The nature of complaints or comments received from the public concerning the rule.
(3) The complexity of the rule.
(4) The extent to which the rule overlaps, duplicates, or conflicts with other federal or State rules or local government ordinances.
(5) The length of time since the rule has been evaluated and an estimate on the length of time the rule will continue to be necessary.
(6) The degree to which technology, economic conditions, or other factors have changed or no longer exist in the area affected by the rule.

"**§ 150B-21.7D. Periodic agency review of rules.**

(a) Within four years of the enactment of this act, each agency shall review all agency rules existing at the time of enactment to determine whether the rules should be continued without change, or should be amended or repealed, consistent with the stated objectives of the underlying statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objectives of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.

(b) Rules adopted after the enactment of this act shall be reviewed within five years of the publication of the final rule and every five years thereafter to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of the underlying statutes.

(c) In reviewing rules to minimize economic impact on small businesses, the agency shall consider all of the following factors:

(1) The continued need for the rule.
(2) The nature of complaints or comments received concerning the rule from members of the public.
(3) The complexity of the rule.

(4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, State, or local government rules.

(5) The length of time since the rule has been evaluated or the degree to which economic conditions or other factors have changed or no longer exist in the area affected by the rule.

"**§ 150B-21.7E. Proposed permanent rules; agency determination of impact on small business; notice to Small Business Regulatory Committee.**

If the economic impact statement prepared as required under G.S. 150B-21.7B indicates the proposed permanent rule may have an adverse economic impact on small business, the agency proposing the permanent rule shall provide a copy of the rule and the impact statement to the Small Business Regulatory Committee established under G.S. 143B-472.99 for its timely review, comment, and recommendations. If the Committee determines that the proposed permanent rule may have an adverse economic impact on small business, the Committee shall request that the agency consider the following:

(1) The availability and practicability of less restrictive alternatives that could be implemented; and

(2) Creative, innovative, or flexible methods of compliance by small business.

"**§ 150B-21.7F. Permanent rules; petition objecting to adverse economic impact on small business.**

(a) If a permanent rule has an adverse economic impact on a small business, that small business may file a written petition with the State agency that adopted the rule objecting to all or part of the rule on any of the following grounds:

(1) The actual effect on small business significantly exceeded or was not reflected in the small business impact statement formulated by the agency in accordance with this Part.

(2) The actual or estimated adverse economic impact was either not considered in public hearings on the rule, or there were no public hearings conducted on the rule.

(3) The technology, economic conditions, or other relevant factors underlying the purpose of the rule have changed or no longer exist.

(b) Upon receipt of the petition, the agency shall forward a copy of the petition to the Small Business Regulatory Committee as notification of a petition filed under this Part. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within 60 days after the receipt of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact of the rule on small business, or if conditions underlying the purpose of the rule have changed or no longer exist. The agency shall provide a copy of its determination to the Committee.

(c) If the agency determines that the petition merits amendment to or repeal of a rule, it may initiate proceedings in accordance with the applicable requirements of this Chapter. If the agency determines that the petition does not merit the amendment or repeal of a rule, any small business adversely affected by the agency's determination

may seek review of the agency's determination by the Committee. Upon request for review, the Committee shall convene a meeting for the purpose of determining whether to recommend that the agency initiate proceedings to amend or repeal a rule. The Committee's review shall not be de novo but shall be based on the actual record presented to the agency. The Committee may base its recommendation on any of the following:

(1) The actual effect on small business significantly exceeded or was not reflected in the small business impact statement formulated by the agency pursuant to G.S. 150B-21.7B.

(2) The actual economic impact was not previously considered by the agency.

(3) The technology, economic conditions, or other relevant factors underlying the purpose for the rule have changed or no longer exist.

(d) If the Committee recommends that the agency initiate proceedings for any reason stated in subsection (c) of this section, then the Committee shall submit to the Joint Administrative Procedure Oversight Committee ("Oversight Committee") an evaluation report and the agency's determination of the petition's merits. The Oversight Committee shall review the Committee's report and agency determination and shall make recommendations to the General Assembly for legislative action, if necessary.

"**§ 150B-21.7G. Waiver of administrative penalties.**

(a) Notwithstanding any other law to the contrary, a State agency that is authorized to assess administrative fines or penalties upon a business may waive or reduce the administrative fine or penalty for a violation of a statute or rule by a small business only under the following conditions:

(1) The small business corrects the violation within 30 days after receipt of notice of the violation.

(2) The violation was the result of an excusable misunderstanding of the agency's interpretation of the rule.

(b) An agency may not waive an administrative fine or penalty when:

(1) A small business has been notified of the violation and has been given a prior opportunity to correct the violation on a prior occasion.

(2) A small business fails to exercise good faith in complying with the statute or rule.

(3) The violation involves willful or criminal misconduct by the small business or its agents or employees.

(4) The violation results in or poses the threat of serious health, safety, or environmental impact.

(5) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

(c) An agency may adopt rules providing for the waiver of administrative fines or penalties in accordance with this section."

SECTION 2. Article 10 of Chapter 143B of the General Statutes is amended by adding the following new Part to read:

"Part 20. Small Business Regulatory Review Committee.

"**§ 143B-472.99. Small Business Regulatory Review Committee established; members; chairman; selection; removal; compensation; quorum; services.**

(a) There is established the Small Business Regulatory Committee ("Committee"). The Committee shall be located in the Department of Commerce for budgetary purposes only. The Committee shall consist of 15 members, 10 of whom shall be appointed by the Governor. In making appointments, the Governor shall ensure that members represent the geographic regions of the State and are employed by or own a small business, as defined in G.S. 150B-21.7B.

(b) The Governor shall designate one member of the Committee to serve as Chairman at the pleasure of the Governor.

(c) Members shall be appointed for a term of four years, except that one-third of the initial members appointed by the Governor shall be appointed to serve for a term of two years. Members shall serve until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. A member shall not be appointed for more than two consecutive terms.

(d) The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

(e) Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Committee shall constitute a quorum for the transaction of business.

(g) The Secretary of Commerce shall provide clerical and other services required for the Committee to carry out its duties.

(h) The Committee shall meet at least semiannually, or more often if necessary as determined by the Chair.

"**§ 143B-472.100. Duties of the Small Business Regulatory Committee.**

The duties of the Small Business Regulatory Committee are as follows:

(1) Provide State agencies with input regarding proposed permanent rules which may have an adverse economic impact, as defined in G.S. 150B-21.7B, upon small business and for which notice has been published in the North Carolina Register in accordance with G.S. 150B-21.2. The Committee shall provide its comment and recommendations to the State agency within 30 days of receipt of the proposed permanent rule and impact statement from the State agency pursuant to G.S. 150B-21.7E.

(2) Review any permanent rule proposed by a State agency for which the agency has notified the Committee that the proposed rule has an adverse economic impact upon small business and make recommendations to the agency and the General Assembly regarding the need for further agency or legislative action."

SECTION 3. G.S. 150B-21.9 reads as rewritten:

"**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. – The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly, when considered in light of the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed and the legislative intent of the General Assembly in delegating the duty.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 and Part 2A of this Article. The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 or Part 2A of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 and Part 2A of this Article.

(b) Timetable. – The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month."

SECTION 3. The Department of Commerce shall use funds appropriated to it for the support of the Small Business Regulatory Committee established under this act.

SECTION 4. This act becomes effective October 1, 2005, and applies to proposed permanent rules the text of which is published in the North Carolina Register on and after that date.

SENATE BILL 664:
Small Business Regulatory Improvement Act

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	April 25, 2005
Introduced by:	Sen. Hartsell	**Summary by:**	Karen Cochrane-Brown Staff Attorney
Version:	First Edition S664-CSRO-11		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 664 creates the Small Business Regulatory Improvement Act. The bill directs State agencies to prepare an economic impact statement before adopting rules that affect small business. Agencies are also required to review any proposed new rule and all existing rules periodically to minimize the adverse economic impact on small businesses. The bill also creates a Small Business Regulatory Committee to review and make recommendations on proposed rules that may have an adverse economic impact on small business.***

The bill further authorizes small businesses to file a petition with an agency when the small business objects to a rule. The Small Business Regulatory Committee also reviews the petition and if the petitioner is still aggrieved by the rule after review by the Committee, the bill authorizes the small business to seek judicial review of the petition.

The bill authorizes any State agency that by law can assess administrative fines or penalties to waive or reduce the fine or penalty against a small business under certain circumstances.

BILL ANALYSIS:

This bill creates a new article in the Administrative Procedure Act entitled the Small Business Regulatory Improvement Act. For purposes of the Act, "small business" is defined as "a business entity including affiliates, that is both independently owned and operated and has not more that 250 employees."

Agency duties to prepare economic impact statements and review rules.

Prior to adopting new rules, agencies must prepare economic impact statements that include:

- Identification and estimate of the number of small businesses affected by the rule.
- The projected reporting and record keeping required by the rule.
- A statement of the probable effect on small business.
- A description of any less intrusive or less costly alternatives to achieving the purpose of the rule.

Prior to amending a rule, and every five years for all existing rules, agencies must review the rules for the following:

- The continued need for the rule.
- The nature of complaints or comments received about the rule.
- The complexity of the rule.
- The extent to which the rule overlaps, duplicates, or conflicts with other State, federal, or local laws or rules.

- For existing rules, the length of time since the rule was evaluated or the degree to which factors have changed or no longer exist in the area affected by the rule.

Agencies must submit economic impact statements to the Small Business Regulatory Committee, and if the Committee determines that the rule may have an adverse impact on small business, the Committee must request the agencies to consider the availability of less restrictive alternatives, and creative, innovative or flexible methods of compliance by small business.

Small Business Petitions and Judicial Review

Small businesses that object to rules may file a written petition with the agency on the following grounds:

- The agency failed to prepare an economic impact statement.
- The actual effect on small business significantly exceeded or was not reflected by the statement.
- The actual or estimated economic impact was not considered at a public hearing.
- The technology, economic or other factors have changed or no longer exist.

Agencies must determine whether there is merit to the petition within 60 days, and if so, the agency must initiate rule making. The agency must also forward the petition and its determination to the Small Business Regulatory Committee for review. If the Committee finds that the petition establishes any of the four bases, it can recommend that the agency initiate rule making. Aggrieved petitioners are authorized to seek judicial review of the agency determination. This process provides an alternative to the administrative hearing process contained in Articles 3 and 3A of Chapter 150B for small businesses.

Waiver of Administrative Penalties

The bill authorizes agencies that have authority to assess fines or penalties to adopt rules providing for waiver of the fines or penalties, if the small business corrects the violation within 30 days or the violation was the result of an excusable misunderstanding of the agency's interpretation.

The bill also lists the circumstances under which the agency may not waive the fine or penalty.

Small Business Regulatory Committee

The bill establishes a Committee within the Department of Commerce to review small business regulatory issues. The Committee is composed of 15 members, all appointed by the Governor. The members must represent different regions of the State and must be employed by or own a small business.

The Secretary of Commerce is directed to provide support for the Committee, including a small business advocate, who shall review all rules and make recommendations on less intrusive and less costly alternatives to the proposed rule.

The Committee's duties include providing input to agencies on proposed rules that have an impact on small business and making recommendations for further administrative or legislative action.

EFFECTIVE DATE: The act would become effective October 1, 2005, and apply to notices of text published on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 664*

PROPOSED COMMITTEE SUBSTITUTE S664-CSRO-11 [v.1]

4/25/2005 10:39:39 PM

Short Title: Small Business Regulatory Improvement Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE STATE AGENCIES PROPOSING PERMANENT RULES TO CONSIDER THE ADVERSE ECONOMIC IMPACT OF THE PROPOSED RULE ON SMALL BUSINESS; TO REQUIRE STATE AGENCY REVIEW OF EXISTING RULES PRIOR TO AMENDMENT TO DETERMINE THE IMPACT ON SMALL BUSINESS; TO ESTABLISH THE SMALL BUSINESS REGULATORY COMMITTEE IN THE DEPARTMENT OF COMMERCE TO REVIEW PROPOSED PERMANENT RULES THAT MAY HAVE AN ADVERSE IMPACT ON SMALL BUSINESS AND MAKE RECOMMENDATIONS TO THE AGENCY AND GENERAL ASSEMBLY; TO AUTHORIZE PETITION BY A SMALL BUSINESS OBJECTING TO A PERMANENT RULE ON SPECIFIED GROUNDS; PROVIDING FOR SMALL BUSINESS REGULATORY COMMITTEE REVIEW OF THE AGENCY'S RESPONSE TO THE PETITION; AUTHORIZING JUDICIAL REVIEW OF THE PETITION; AND AUTHORIZING AGENCY WAIVER OF ADMINISTRATIVE FINES OR PENALTIES FOR VIOLATIONS BY SMALL BUSINESS;

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 150B of the General Statutes is amended by adding the following new Part to read:

"Part 2A. Small Business Regulatory Improvement Act.

"**§ 150B-21.7A. Findings; definitions.**

(a) The General Assembly finds the following:

(1) A uniform system for administrative rule making and adjudicatory process is necessary to ensure that rules to protect the health, safety, and economic welfare of the State are adopted and enforced in an open, fair, and equitable manner.

(2) In adopting and enforcing administrative rules, State agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on employers.

(3) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity.

(4) The practice of treating all regulated businesses as equal may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation.

(b) As used in this Part, the term:

(1) 'Adverse economic impact' means any financial impact on small businesses affected by the rule.

(2) 'Committee' means the Small Business Regulatory Committee established under G.S. 143B-472.99.

(3) 'Small business' means a business entity, including its affiliates, that is both independently owned and operated and has not more than 250 employees.

"**§ 150B-21.7B. Rules affecting small businesses; economic impact statement by agency.**

(a) Before an agency publishes in the North Carolina Register the proposed text of a permanent rule that would have an adverse economic impact on small businesses, the agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of small businesses subject to the proposed rule.

(2) The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

(3) A statement of the probable effect on impacted small businesses.

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

(b) The agency shall include the adverse economic impact statement in the notice of text in accordance with G.S. 150B-21.2(c).

"**§ 150B-21.7C. Agency review of existing rules.**

In order to minimize the adverse economic impact on small businesses, prior to amending a permanent rule, the agency shall consider the following:

(1) The continued need for the rule.

(2) The nature of complaints or comments received from the public concerning the rule.

(3) The complexity of the rule.

(4) The extent to which the rule overlaps, duplicates, or conflicts with other federal or State rules or local government ordinances.

(5) The length of time since the rule has been evaluated and an estimate on the length of time the rule will continue to be necessary.

(6) The degree to which technology, economic conditions, or other factors have changed or no longer exist in the area affected by the rule.

"**§ 150B-21.7D. Periodic agency review of rules.**

(a) Within four years of the enactment of this act, each agency shall review all agency rules existing at the time of enactment to determine whether the rules should be continued without change, or should be amended or repealed, consistent with the stated objectives of the underlying statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objectives of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.

(b) Rules adopted after the enactment of this act shall be reviewed within five years of the publication of the final rule and every five years thereafter to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of the underlying statutes.

(c) In reviewing rules to minimize economic impact on small businesses, the agency shall consider all of the following factors:

(1) The continued need for the rule.

(2) The nature of complaints or comments received concerning the rule from members of the public.

(3) The complexity of the rule.

(4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, State, or local government rules.

(5) The length of time since the rule has been evaluated or the degree to which economic conditions or other factors have changed or no longer exist in the area affected by the rule.

"**§ 150B-21.7E. Proposed permanent rules; agency determination of impact on small business; notice to Small Business Regulatory Committee.**

If the economic impact statement prepared as required under G.S. 150B-21.7B indicates the proposed permanent rule may have an adverse economic impact on small business, the agency proposing the permanent rule shall provide a copy of the notice of text including the impact statement to the Small Business Regulatory Committee established under G.S. 143B-472.99 for its timely review, comment, and recommendations. The agency shall submit the documents to the Committee when it submits the notice of text to the Register for publication. If the Committee determines that the proposed permanent rule may have an adverse economic impact on small business, the Committee shall request that the agency consider the following:

(1) The availability and practicability of less restrictive alternatives that could be implemented; and

(2) Creative, innovative, or flexible methods of compliance by small business.

"§ 150B-21.7F. Permanent rules; petition objecting to adverse economic impact on small business; judicial review.

(a) If a permanent rule has an adverse economic impact on a small business, that small business may file a written petition with the State agency that adopted the rule objecting to all or part of the rule on any of the following grounds:

(1) The agency's failure to comply with the requirements of G.S. 150B-21.7B.

(2) The actual effect on small business significantly exceeded or was not reflected in the small business impact statement formulated by the agency in accordance with this Part.

(3) The actual or estimated adverse economic impact was either not considered in public hearings on the rule, or there were no public hearings conducted on the rule.

(4) The technology, economic conditions, or other relevant factors underlying the purpose of the rule have changed or no longer exist.

(b) Upon receipt of the petition, the agency shall forward a copy of the petition to the Small Business Regulatory Committee as notification of a petition filed under this Part. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within 60 days after the receipt of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact of the rule on small business, or if conditions underlying the purpose of the rule have changed or no longer exist. The agency shall provide a copy of its determination to the Committee.

(c) If the agency determines that the petition merits amendment to or repeal of a rule, it shall initiate rule making in accordance with the applicable requirements of this Chapter. If the agency determines that the petition does not merit the amendment or repeal of a rule, any small business adversely affected by the agency's determination may seek review of the agency's determination by the Committee. Upon request for review, the Committee shall convene a meeting for the purpose of determining whether to recommend that the agency initiate proceedings to amend or repeal a rule. The Committee's review shall not be de novo but shall be based on the actual record presented to the agency. The Committee may base its recommendation on any of the following:

(1) The failure of the agency to comply with the requirements of G.S. 150B-21.7B.

(2) The actual effect on small business significantly exceeded or was not reflected in the small business impact statement formulated by the agency pursuant to G.S. 150B-21.7B.

(3) The actual economic impact was not previously considered by the agency.

(4) The technology, economic conditions, or other relevant factors underlying the purpose for the rule have changed or no longer exist.

(d) If the Committee recommends that the agency initiate rule making for any reason stated in subsection (c) of this section, then the small business that is adversely

affected or aggrieved by the adoption of a permanent rule may seek judicial review of the petition under this section. The small business may seek judicial review under this subsection during the period commencing on the date the permanent rule becomes effective and end one year from that date. If the court finds in favor of the petitioner, it may direct the agency to initiate rule making or provide other appropriate relief.

(e) The Committee shall submit to the Joint Administrative Procedure Oversight Committee ("Oversight Committee") an evaluation report and the agency's determination of the petition's merits. The Oversight Committee shall review the Committee's report and agency determination and shall make recommendations to the General Assembly for legislative action, if necessary.

"**§ 150B-21.7G. Waiver of administrative penalties.**

(a) Notwithstanding any other law to the contrary, a State agency that is authorized to assess administrative fines or penalties upon a business may waive or reduce the administrative fine or penalty for a violation of a statute or rule by a small business only under the following conditions:

(1) The small business corrects the violation within 30 days after receipt of notice of the violation.

(2) The violation was the result of an excusable misunderstanding of the agency's interpretation of the rule.

(b) An agency may not waive an administrative fine or penalty when:

(1) A small business has been notified of the violation and has been given a prior opportunity to correct the violation on a prior occasion.

(2) A small business fails to exercise good faith in complying with the statute or rule.

(3) The violation involves willful or criminal misconduct by the small business or its agents or employees.

(4) The violation results in or poses a threat of serious health, safety, or environmental impact.

(5) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

(c) An agency shall adopt rules providing for the waiver of administrative fines or penalties in accordance with this section."

SECTION 2. Article 10 of Chapter 143B of the General Statutes is amended by adding the following new Part to read:

"Part 20. Small Business Regulatory Review Committee.

"**§ 143B-472.99. Small Business Regulatory Review Committee established; members; chairman; selection; removal; compensation; quorum; services.**

(a) There is established the Small Business Regulatory Committee ("Committee"). The Committee shall be located in the Department of Commerce for budgetary purposes only. The Committee shall consist of 15 members, each of whom shall be appointed by the Governor. In making appointments, the Governor shall ensure

that members represent the geographic regions of the State and are employed by or own a small business, as defined in G.S. 150B-21.7B.

(b) The Governor shall designate one member of the Committee to serve as Chairman at the pleasure of the Governor.

(c) Members shall be appointed for a term of four years, except that one-third of the initial members appointed by the Governor shall be appointed to serve for a term of two years. Members shall serve until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. A member shall not be appointed for more than two consecutive terms.

(d) The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

(e) Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Committee shall constitute a quorum for the transaction of business.

(g) The Secretary of Commerce shall provide clerical and other services required for the Committee to carry out its duties, including the designation of a Small Business Advocate. The Advocate shall review all proposed rules submitted to the Committee and make recommendations on less intrusive and less costly alternative methods of achieving the purpose of the proposed rule.

(h) The Committee shall meet at least semiannually, or more often if necessary as determined by the Chair.

"**§ 143B-472.100. Duties of the Small Business Regulatory Committee.**

The duties of the Small Business Regulatory Committee are as follows:

(1) Provide State agencies with input regarding proposed permanent rules which may have an adverse economic impact, as defined in G.S. 150B-21.7B, upon small business and for which notice has been published in the North Carolina Register in accordance with G.S. 150B-21.2. The Committee shall provide its comment and recommendations to the State agency within 30 days of receipt of the proposed permanent rule and impact statement from the State agency pursuant to G.S. 150B-21.7E.

(2) Review any permanent rule proposed by a State agency for which the agency has notified the Committee that the proposed rule has an adverse economic impact upon small business and make recommendations to the agency and the General Assembly regarding the need for further agency or legislative action."

SECTION 3. G.S. 150B-21.9 reads as rewritten:

"**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. – The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.
(2) It is clear and unambiguous.
(3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly, when considered in light of the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed and the legislative intent of the General Assembly in delegating the duty.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 and Part 2A of this Article. The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 or Part 2A of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 and Part 2A of this Article.

(b) Timetable. – The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month."

SECTION 4. G.S. 150B-21.2(c) reads as rewritten:

"(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.
(2) A short explanation of the reason for the proposed rule.
(3) A citation to the law that gives the agency the authority to adopt the rule.
(4) The proposed effective date of the rule.
(4a) An adverse economic impact statement on small business as required by G.S. 150B-21.7B.
(5) The date, time, and place of any public hearing scheduled on the rule.
(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process."

SECTION 5. This act becomes effective October 1, 2005, and applies to notices of text for proposed permanent rules published in the North Carolina Register on and after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 664*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S664-ARO-4 [v.1]

Date April 26 ,2005

Comm. Sub. [YES]
Amends Title [YES]
S664-CSRO-11

Senator _____

moves to amend the bill on page 1, line 15-16, by rewriting the lines to read:

"PETITION; AUTHORIZING AGENCY WAIVER OF ADMINISTRATIVE FINES OR PENALTIES FOR VIOLATION BY SMALL BUSINESS; AND APPROPRIATING FUNDS TO THE DEPARTMENT OF COMMERCE TO SUPPORT THE SMALL BUSINESS REGULATORY COMMITTEE.",

and on page 8, lines 3-4, by inserting the following between the lines:

"SECTION 4.1. There is appropriated to the Department of Commerce the sum of sixty thousand dollars ($60,000) for the 2005-2006 fiscal year to be used for the support of the Small Business Regulatory Committee established under this act.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 664*
PROPOSED COMMITTEE SUBSTITUTE S664-PCS75298-RO-11

Short Title: Small Business Regulatory Improvement Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE STATE AGENCIES PROPOSING PERMANENT RULES TO CONSIDER THE ADVERSE ECONOMIC IMPACT OF THE PROPOSED RULE ON SMALL BUSINESS; TO REQUIRE STATE AGENCY REVIEW OF EXISTING RULES PRIOR TO AMENDMENT TO DETERMINE THE IMPACT ON SMALL BUSINESS; TO ESTABLISH THE SMALL BUSINESS REGULATORY REVIEW COMMITTEE IN THE DEPARTMENT OF COMMERCE TO REVIEW PROPOSED PERMANENT RULES THAT MAY HAVE AN ADVERSE IMPACT ON SMALL BUSINESS AND MAKE RECOMMENDATIONS TO THE AGENCY AND GENERAL ASSEMBLY; TO AUTHORIZE PETITION BY A SMALL BUSINESS OBJECTING TO A PERMANENT RULE ON SPECIFIED GROUNDS; PROVIDING FOR SMALL BUSINESS REGULATORY REVIEW COMMITTEE REVIEW OF THE AGENCY'S RESPONSE TO THE PETITION; AUTHORIZING JUDICIAL REVIEW OF THE PETITION; AUTHORIZING AGENCY WAIVER OF ADMINISTRATIVE FINES OR PENALTIES FOR VIOLATIONS BY SMALL BUSINESS; AND APPROPRIATING FUNDS TO THE DEPARTMENT OF COMMERCE TO SUPPORT THE SMALL BUSINESS REGULATORY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 150B of the General Statutes is amended by adding the following new Part to read:

"Part 2A. Small Business Regulatory Improvement Act.

"**§ 150B-21.7A. Findings; definitions.**

(a) The General Assembly finds the following:

(1) A uniform system for administrative rule making and adjudicatory process is necessary to ensure that rules to protect the health, safety,

and economic welfare of the State are adopted and enforced in an open, fair, and equitable manner.

(2) In adopting and enforcing administrative rules, State agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on employers.

(3) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity.

(4) The practice of treating all regulated businesses as equal may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation.

(b) As used in this Part, the term:

(1) 'Adverse economic impact' means any financial impact on small businesses affected by the rule.

(2) 'Committee' means the Small Business Regulatory Review Committee established under G.S. 143B-472.99.

(3) 'Small business' means a business entity, including its affiliates, that is both independently owned and operated and has not more than 250 employees.

"**§ 150B-21.7B. Rules affecting small businesses; economic impact statement by agency.**

(a) Before an agency publishes in the North Carolina Register the proposed text of a permanent rule that would have an adverse economic impact on small businesses, the agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of small businesses subject to the proposed rule.

(2) The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

(3) A statement of the probable effect on impacted small businesses.

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

(b) The agency shall include the adverse economic impact statement in the notice of text in accordance with G.S. 150B-21.2(c).

"**§ 150B-21.7C. Agency review of existing rules.**

In order to minimize the adverse economic impact on small businesses, prior to amending a permanent rule, the agency shall consider the following:

(1) The continued need for the rule.

(2) The nature of complaints or comments received from the public concerning the rule.

(3) The complexity of the rule.

(4) The extent to which the rule overlaps, duplicates, or conflicts with other federal or State rules or local government ordinances.

(5) The length of time since the rule has been evaluated and an estimate on the length of time the rule will continue to be necessary.

(6) The degree to which technology, economic conditions, or other factors have changed or no longer exist in the area affected by the rule.

"**§ 150B-21.7D. Periodic agency review of rules.**

(a) Within four years of the enactment of this act, each agency shall review all agency rules existing at the time of enactment to determine whether the rules should be continued without change, or should be amended or repealed, consistent with the stated objectives of the underlying statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objectives of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.

(b) Rules adopted after the enactment of this act shall be reviewed within five years of the publication of the final rule and every five years thereafter to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of the underlying statutes.

(c) In reviewing rules to minimize economic impact on small businesses, the agency shall consider all of the following factors:

(1) The continued need for the rule.

(2) The nature of complaints or comments received concerning the rule from members of the public.

(3) The complexity of the rule.

(4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, State, or local government rules.

(5) The length of time since the rule has been evaluated or the degree to which economic conditions or other factors have changed or no longer exist in the area affected by the rule.

"**§ 150B-21.7E. Proposed permanent rules; agency determination of impact on small business; notice to Small Business Regulatory Review Committee.**

If the economic impact statement prepared as required under G.S. 150B-21.7B indicates the proposed permanent rule may have an adverse economic impact on small business, the agency proposing the permanent rule shall provide a copy of the notice of text including the impact statement to the Small Business Regulatory Review Committee established under G.S. 143B-472.99 for its timely review, comment, and recommendations. The agency shall submit the documents to the Committee when it submits the notice of text to the Register for publication. If the Committee determines that the proposed permanent rule may have an adverse economic impact on small business, the Committee shall request that the agency consider the following:

(1) The availability and practicability of less restrictive alternatives that could be implemented; and

(2) Creative, innovative, or flexible methods of compliance by small business.

"**§ 150B-21.7F. Permanent rules; petition objecting to adverse economic impact on small business; judicial review.**

(a) If a permanent rule has an adverse economic impact on a small business, that small business may file a written petition with the State agency that adopted the rule objecting to all or part of the rule on any of the following grounds:

(1) The agency's failure to comply with the requirements of G.S. 150B-21.7B.

(2) The actual effect on small business significantly exceeded or was not reflected in the small business impact statement formulated by the agency in accordance with this Part.

(3) The actual or estimated adverse economic impact was either not considered in public hearings on the rule, or there were no public hearings conducted on the rule.

(4) The technology, economic conditions, or other relevant factors underlying the purpose of the rule have changed or no longer exist.

(b) Upon receipt of the petition, the agency shall forward a copy of the petition to the Small Business Regulatory Review Committee as notification of a petition filed under this Part. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within 60 days after the receipt of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact of the rule on small business, or if conditions underlying the purpose of the rule have changed or no longer exist. The agency shall provide a copy of its determination to the Committee.

(c) If the agency determines that the petition merits amendment to or repeal of a rule, it shall initiate rule making in accordance with the applicable requirements of this Chapter. If the agency determines that the petition does not merit the amendment or repeal of a rule, any small business adversely affected by the agency's determination may seek review of the agency's determination by the Committee. Upon request for review, the Committee shall convene a meeting for the purpose of determining whether to recommend that the agency initiate proceedings to amend or repeal a rule. The Committee's review shall not be de novo but shall be based on the actual record presented to the agency. The Committee may base its recommendation on any of the following:

(1) The failure of the agency to comply with the requirements of G.S. 150B-21.7B.

(2) The actual effect on small business significantly exceeded or was not reflected in the small business impact statement formulated by the agency pursuant to G.S. 150B-21.7B.

(3) The actual economic impact was not previously considered by the agency.

(4) The technology, economic conditions, or other relevant factors underlying the purpose for the rule have changed or no longer exist.

(d) If the Committee recommends that the agency initiate rule making for any reason stated in subsection (c) of this section, then the small business that is adversely affected or aggrieved by the adoption of a permanent rule may seek judicial review of the petition under this section. The small business may seek judicial review under this subsection during the period commencing on the date the permanent rule becomes effective and end one year from that date. If the court finds in favor of the petitioner, it may direct the agency to initiate rule making or provide other appropriate relief.

(e) The Committee shall submit to the Joint Administrative Procedure Oversight Committee ("Oversight Committee") an evaluation report and the agency's determination of the petition's merits. The Oversight Committee shall review the Committee's report and agency determination and shall make recommendations to the General Assembly for legislative action, if necessary.

"**§ 150B-21.7G. Waiver of administrative penalties.**

(a) Notwithstanding any other law to the contrary, a State agency that is authorized to assess administrative fines or penalties upon a business may waive or reduce the administrative fine or penalty for a violation of a statute or rule by a small business only under the following conditions:

(1) The small business corrects the violation within 30 days after receipt of notice of the violation.

(2) The violation was the result of an excusable misunderstanding of the agency's interpretation of the rule.

(b) An agency may not waive an administrative fine or penalty when:

(1) A small business has been notified of the violation and has been given a prior opportunity to correct the violation on a prior occasion.

(2) A small business fails to exercise good faith in complying with the statute or rule.

(3) The violation involves willful or criminal misconduct by the small business or its agents or employees.

(4) The violation results in or poses a threat of serious health, safety, or environmental impact.

(5) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

(c) An agency shall adopt rules providing for the waiver of administrative fines or penalties in accordance with this section."

SECTION 2. Article 10 of Chapter 143B of the General Statutes is amended by adding the following new Part to read:

"Part 20. Small Business Regulatory Review Committee.

"**§ 143B-472.99. Small Business Regulatory Review Committee established; members; chairman; selection; removal; compensation; quorum; services.**

(a) There is established the Small Business Regulatory Review Committee ("Committee"). The Committee shall be located in the Department of Commerce for budgetary purposes only. The Committee shall consist of 15 members, each of whom

shall be appointed by the Governor. In making appointments, the Governor shall ensure that members represent the geographic regions of the State and are employed by or own a small business, as defined in G.S. 150B-21.7B.

(b) The Governor shall designate one member of the Committee to serve as Chairman at the pleasure of the Governor.

(c) Members shall be appointed for a term of four years, except that one-third of the initial members appointed by the Governor shall be appointed to serve for a term of two years. Members shall serve until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. A member shall not be appointed for more than two consecutive terms.

(d) The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

(e) Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Committee shall constitute a quorum for the transaction of business.

(g) The Secretary of Commerce shall provide clerical and other services required for the Committee to carry out its duties, including the designation of a Small Business Advocate. The Advocate shall review all proposed rules submitted to the Committee and make recommendations on less intrusive and less costly alternative methods of achieving the purpose of the proposed rule.

(h) The Committee shall meet at least semiannually, or more often if necessary as determined by the Chair.

"**§ 143B-472.100. Duties of the Small Business Regulatory Review Committee.**

The duties of the Small Business Regulatory Review Committee are as follows:

(1) Provide State agencies with input regarding proposed permanent rules which may have an adverse economic impact, as defined in G.S. 150B-21.7B, upon small business and for which notice has been published in the North Carolina Register in accordance with G.S. 150B-21.2. The Committee shall provide its comment and recommendations to the State agency within 30 days of receipt of the proposed permanent rule and impact statement from the State agency pursuant to G.S. 150B-21.7E.

(2) Review any permanent rule proposed by a State agency for which the agency has notified the Committee that the proposed rule has an adverse economic impact upon small business and make recommendations to the agency and the General Assembly regarding the need for further agency or legislative action."

SECTION 3. G.S. 150B-21.9 reads as rewritten:

"**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. – The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.
(2) It is clear and unambiguous.
(3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly, when considered in light of the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed and the legislative intent of the General Assembly in delegating the duty.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 and Part 2A of this Article. The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 or Part 2A of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 and Part 2A of this Article.

(b) Timetable. – The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month."

SECTION 4. G.S. 150B-21.2(c) reads as rewritten:

"(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.
(2) A short explanation of the reason for the proposed rule.
(3) A citation to the law that gives the agency the authority to adopt the rule.
(4) The proposed effective date of the rule.
(4a) An adverse economic impact statement on small business as required by G.S. 150B-21.7B.
(5) The date, time, and place of any public hearing scheduled on the rule.
(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process."

SECTION 5. There is appropriated to the Department of Commerce the sum of sixty thousand dollars ($60,000) for the 2005-2006 fiscal year to be used for the support of the Small Business Regulatory Review Committee.

SECTION 6. This act becomes effective October 1, 2005, and applies to notices of text for proposed permanent rules published in the North Carolina Register on and after that date.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Mills	Senator Purcell's Office
Nancy Minard	The NC Off highway Vehicle Assoc.
Wanda Montano	US LEC Corp. Charlotte
EK Sprenkel	DOT
Bill Scoggin	KCLH
Andrew Holton	Sen. Gunnis office
Sid Staton	NCMS
Raquel Bartz	Duke University Medical Center
Allison Mejia	NCMS
Shayla Tatum-Daniels	JWP Civitas Institute
[illegible]	[illegible]
[illegible]	[illegible]

James Kingston — FUDP
ERIK OSE — CRA-NC
Adam Ross — CRA-NC
DREW MORITZ — GRCC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Jim Drennan	I O G
Matt Osborne	AOC
Michelle Jones, MD	MD of the Day
Erin Kinney	NC Conservation Network
John Motley	Gov office
Suzanne Buckley	Gov. office
Sandy Sands	WCSR
David Crawford	AIH North Carolina
Jessica Sage	NC FPC
Peter Lutz	NCMS
Kristen Shipherd	NC Medical Society

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Bob Burris	NCDOT
Stacey Flannery	NCHCFA
Hank Jones	Attorney Raleigh
Greg Dunn	Alliance of Auto Mfrs
Steve Kalland	NC Solar Center
Elizabeth Ouzts	NCPIRG
Mike Carey	Carey & Associates
Ken Melton	D.O.R.
Kevin Leonard	Womble, Carlyle, Sandridge, Rice & Leonard
Mike Mann	NCBAA
Amy Jo Horne	NCMS

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Vanessa Welch	WTVD ABC 11
Peter Lawler	CCCS of NC
Tim Kent	NC Assn Realtors
R. Paul Wilms	NCHBA
Rick Zechini	NC Assn. of Realtors
Brent Myers, MD	North Carolina College of Emergency Physicians
Bob Schafermeyer	Charlotte, NC
[illegible]	NCRM
Johanna Reese	DENR
Stephanie Simpson	NC Association of REALTORS
Gregg Thompson	NFIB

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Pat Gartland	Office of Advocacy, SBA
Tom Vitalline	NCCBI
Steve Shone	NC Pediatric Society
Molly Diggs	Sierra Club
Alice Garland	NC DOC
Don Hurst	NC DOC
Kathleen Edwards	UNC-CH Legis. Reporting Service
Martha McCarell	Carolinas Healthcare Sys.
Colleen Kochanek	North Carolina College of Emergency Physicians
Wink Hilliard	" " " "
Kathy VanKleeck	Specialty Vehicle Institute of America
Jim Everhart	CBA ABATE of NC, NC Retreads M/C
Brad Lamb	NC Consumers Council

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Estherine Davis	ElectriCities
John Goodman	Alley Associates
Elizabeth Dalton	NCCBI
Rachelle Latimer	African American Caucus - Mecklenburg
Laura McClellan	AAC - Meck Co.
Jeanne McConnell	AAC - Meck Co
VL McBride	NCAA
Pamela Coles	AAC Meck Co
Brian Lewis	Covenant with NC's Children
David Stoller	State Farm
Jeb Alley	Alley Assoc

Michelle Bank State Govt Radio

Doug Hoell NCPMA

Doug Miskam Capstat

Gary Harris NCPIA

Tom, Copeland NCDC

Susan Seymour NCCCS BioNetwork

Norman Smith NCCCS BioNetwork

Kris Allsbury NCCCS BioNetwork

TONY ALMEIDA DUKE ENERGY

Tom Tucker Tim & Associates

Mark Carlton

Franklin Folger NCDOT

Susan Lupton COALITION FOR RESPONSIBLE LENDING

Senate Commerce Committee
Thursday, April 28, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 384	NC Energy Policy Rewrite.	Senator Horton
SB 445	Insurance Premium Discount/Prevention Course.	Senator Boseman
SB 603	Light-Duty Road Exemption-Building Supplies.	Senator Jenkins
SB 615	Insurance Technical Corrections.	Senator Thomas
SB 756	Revise Building Commission Membership.	Senator Nesbitt, Jr.
SB 783	Report Hacker/Fraudulent Access to ID Data.	Senator Forrester
SB 823	Insurance Discount for Safe Driving Class.	Senator Jenkins
SB 879	Economic Development - NC Product Preference.	Senator Garrou
SB 884	State Traditional Pottery Birthplace.	Senator Tillman
SB 907	Minority Business Certification.	Senator Dorsett

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, April 28, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 28, 2005, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Scott Poseil and Michael Carey from Wake County, sponsored by Senator Neal Hunt; and Alex Loizias from Wilmington and Robbie Ethridge from Castle Hayne, sponsored by Senator Julia Boseman.

Senator Soles announced that Senate Bill 384, NC Energy Policy Rewrite and Senate Bill 756, Revise Building Commission Membership, would not be heard at this meeting.

Senator Soles recognized Senator Scott Thomas to discuss Senate Bill 615, Insurance Technical Corrections. Mr. Frank Folger, Department of Insurance, explained the provisions of the bill. Senator Richard Stevens moved a favorable report of the bill. The motion carried.

Senator Soles recognized Senator Jerry Tillman to explain Senate Bill 884, State Traditional Pottery Birthplace. Senator Tom Apodaca moved a favorable report of the bill. The motion carried.

Senator Soles recognized Senator Clark Jenkins to speak on Senate Bill 603, Light-Duty Road Examption-Building Supplies. Mr. Paul Wilms, representing the North Carolina Homebuilders Association, spoke in favor of the bill. Mr. Lacey Lane, Director of Asset Management, Department of Transportation, mentioned the Department's concern with having any exemptions. Senator Tom Apodaca moved a favorable report of the bill. The motion carried.

Senator Soles recognized Senator Julia Boseman to explain Senate Bill 445, Insurance Premium Discount/Prevention Course. He also mentioned Senate Bill 823, Insurance Discount for Safe Driving Class would be considered. Senator Boseman asked that Mr. Joe Mangum, representing the AARP Driver Safety Plan, be allowed to speak on Senate Bill 445. Mr. Mangum spoke in favor of the bill. Mr. Joe Stewart, representing the Insurance Federation of North Carolina spoke against the bill. Senator Katie Dorsett moved a favorable report of the bill. The motion carried.

Senator Jenkins explained Senate Bill 823. Senator Dorsett moved the adoption of a committee substitute for discussion purposes. The motion carried. Senator Jim Forrester moved for an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles recognized Senator Dorsett to discuss Senate Bill 907. She moved the adoption of a committee substitute. The motion carried. She introduced Ms. Bridget Wall, Director of the Office for Historically Underutilized Businesses, Department of Administration. Ms. Wall explained the provisions of the bill. Senator Vernon Malone moved for an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles explained that Senator Linda Garrou was not able to attend the meeting, but that she requested staff present Senate Bill 879, Economic Development – NC Product Preference.

Senator Phil Berger moved the adoption of a committee substitute. The motion carried. Mr. Walker Reagan, Research Division, explained the committee substitute. Senator Eddie Goodall moved for an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles introduced Senator Jim Forrester to present Senate Bill 783, Report Hacker/Fraudulent Access to ID Data. Senator Forrester explained the essence of the bill but added that he wanted to do some additional work on the bill. He wanted to take the opportunity of time left in the meeting to make the committee members and visitors aware of the bill. He asked for suggestions to be included in a committee substitute to be presented at a subsequent meeting.

The meeting adjourned at 11:50 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, April 28, 2005

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

FAVORABLE

S.B. **445** Insurance Premium Discount/Prevention Course.
Sequential Referral: None
Recommended Referral: None

S.B. **603** Light-Duty Road Exemption-Building Supplies.
Sequential Referral: None
Recommended Referral: None

S.B. **615** Insurance Technical Corrections.
Sequential Referral: None
Recommended Referral: None

S.B. **884** State Traditional Pottery Birthplace.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, May 02, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **823** Insurance Discount for Safe Driving Class.

Draft Number:	PCS 55220
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **879** Economic Development - NC Product Preference.

Draft Number:	PCS 85242
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **907** Minority Business Certification.

Draft Number:	PCS 85241
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 384*

Short Title:	NC Energy Policy Rewrite.	(Public)
Sponsors:	Senators Horton and Kinnaird.	
Referred to:	Commerce.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE NORTH CAROLINA ENERGY POLICY ACT OF 1975.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 113B-8(a), G.S. 113B-8(b), G.S. 113B-8(d) through G.S. 113B-8(f), G.S. 113B-9(e), G.S. 113B-9(i), and G.S. 113B-9(j) are repealed.

SECTION 1.(b) G.S. 113B-7 through G.S. 113B-10, as amended by subsection (a) of this section, are recodified as G.S. 113B-10.1, except that G.S. 113B-8(g) and G.S. 113B-8(h) are recodified as G.S. 113B-11(g) and G.S. 113B-11(h) respectively; G.S. 113B-9(b) is recodified as G.S. 113B-23(d); and G.S. 113B-9(k) is recodified as G.S. 113B-11(i).

SECTION 1.(c) G.S. 113B-7(a) through G.S. 113B-7(c) become G.S. 113B-10.1(a) through G.S. 113B-10.1(c). G.S. 113B-8(c) becomes G.S. 113B-10.1(d). G.S. 113B-9(a) becomes G.S. 113B-10.1(e). G.S. 113B-9(c) and G.S. 113B-9(d) become G.S. 113B-10.1(f) and G.S. 113B-10.1(g), G.S. 113B-9(f) through G.S. 113B-9(h) become G.S. 113B-10.1(h) through G.S. 113B-10.1(j), G.S. 113B-10(a) through G.S. 113B-10(e) become G.S. 113B-10.1(k) through G.S. 113B-10.1(o). G.S. 113B-7(d) through G.S. 113B-7(g) become G.S. 113B-10.1(p) through G.S. 113B-10.1(s).

SECTION 2. Chapter 113B of the General Statutes, as amended and recodified by Section 1 of this act, reads as rewritten:

"**Chapter 113B.**

"**North Carolina Energy Policy ~~Act of 1975.~~ Act.**

"Article 1.

"Energy Policy Council.

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future ~~social, economic and environmental development~~ social and economic development and the future environmental quality of North ~~Carolina;~~Carolina.

(3) It is the responsibility of State government to encourage a reliable and adequate supply of energy for North Carolina at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion of the general ~~welfare; and~~welfare.

(4) The State ~~has not provided the basis for development of~~needs a long-range unified energy policy to ~~encompass comprehensive energy resource planning and efficient management of the rate of consumption of existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of energy, and to prudently conserve energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North Carolina.~~ensure the availability of reliable energy in the State, to improve the public health and the environmental quality of the State, to promote wise land use, support a sound economy of the State, to achieve a sustainable energy strategy for the State, and to provide a means by which State government leads the State by its example.

(5) It is the expressed intent of this Chapter to provide for development of such a unified energy policy for the State of North Carolina.

"**§ 113B-2. Creation of Energy Policy Council; purpose of Council.**

(a) There is hereby created a council to advise and make recommendations on energy policy to the Governor and the General Assembly to be known as the Energy Policy Council which shall be located within the Department of Administration.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy Policy Council shall be as prescribed by the Secretary of Administration.

(c) The Energy Policy Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy.

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Policy Council shall consist of 18 members to be appointed as follows:

(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;

(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;

(3) Nine public members who are citizens of the State of North Carolina to be appointed by the Governor;

(4) The chairman of the North Carolina Utilities Commission, the Secretary of Environment and Natural Resources, the Commissioner of Agriculture, the Secretary of Commerce and the Secretary of Administration or their designees from their respective departments.

(b) ~~Initial appointments to the Energy Policy Council shall be made by July 15, 1975, and each such appointee shall serve until January 31, 1977. Thereafter, the~~The appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.

(c) The public members of the Energy Policy Council shall have the following qualifications:

(1) One such member shall be ~~experienced~~ knowledgeable in the electric power ~~industry;~~industry.

(2) One such member shall be ~~experienced~~ knowledgeable in the natural gas ~~industry;~~industry.

(3) One such member shall be ~~experienced~~ knowledgeable in the petroleum marketing ~~industry;~~industry.

(4) One such member shall be ~~experienced~~ knowledgeable in economic analysis of energy ~~requirements;~~requirements.

(5) One such member shall be ~~experienced~~ knowledgeable in environmental ~~protection;~~protection.

(6) One such member shall be ~~experienced~~ knowledgeable in industrial energy ~~consumption;~~consumption.

(7) One such member shall be knowledgeable ~~of~~ in alternative sources of ~~energy;~~energy.

(8) One such member who, at the time of appointment, is a county commissioner; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as a county ~~commissioner;~~commissioner.

(9) One such member who, at the time of appointment, is an elected municipal official; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as an elected municipal official.

"§ 113B-4. Chairman of Council; replacement; reimbursement of members.

(a) ~~On July 15, 1975, on January 31, 1977, and every four years thereafter, the~~Every four years, the Governor shall designate one of the members of the Energy Policy Council to serve as chairman of the Council.

(b) In case of a vacancy in the membership on the Energy Policy Council prior to the expiration of a member's term, a successor shall be appointed within ~~30~~ 90 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy Policy Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

"**§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.**

(a) To facilitate the work of the Energy Policy Council and for administrative purposes, the chairman of the Energy Policy Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy Policy Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy Policy Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council.

"**§ 113B-6. General duties and responsibilities.**

The Energy Policy Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor a comprehensive long-range State ~~energy policy~~Energy Plan to achieve maximum effective management and use of present and future sources of ~~energy, such policy to~~ energy. The State Energy Plan shall include but not be limited to ~~an energy efficiency program, an energy management plan, an emergency energy program, and an energy research and development program;~~ components that address energy efficiency, energy analysis and assessment, contingency and energy emergency planning, and energy research and development.

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy matters and to continually educate and inform the general public regarding such energy ~~matters;~~matters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modifications of energy policy, plans and programs as the Council considers necessary and desirable.

(5) To develop and administer the Low-Income Residential Energy Program. Nothing in this subdivision shall be construed as obligating the General Assembly to appropriate funds for the Program or as entitling any person to services under the Program.

"**§ 113B-10.1. State Energy Plan; components.**

(a) The Energy Policy Council shall prepare a recommended ~~Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30,~~

~~1976.~~ State Energy Plan. The State Energy Plan shall include recommendations that address at least all of the following:

(1) Energy efficiency.

(2) Energy analysis and assessment.

(3) Contingency and energy emergency planning.

(4) Energy research and development.

(b) The ~~Energy Efficiency Program~~ recommendations included in the energy efficiency component of the State Energy Plan shall be designed to ~~assure~~ ensure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy ~~through~~ by reducing wasteful, ~~inefficient~~ inefficient, or uneconomical uses of energy resources.

(c) The ~~Energy Efficiency Program~~recommendations in the State Energy Plan that address energy efficiency shall include but not be limited to the ~~following recommendations:~~following:

(1) Recommendations to the Building Code Council for ~~lighting, insulation, climate control systems and other~~ building design and construction standards ~~which~~ that increase the efficient use of energy and water and are economically feasible to ~~implement;~~implement.

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings ~~which~~ that would reduce energy consumption, yet are both technically and economically feasible and not injurious to public ~~health and safety;~~health, productivity, and safety.

(3) Recommendations for minimum levels of operating efficiency for all ~~appliances~~ appliances, equipment, and tools whose use requires a significant amount of energy based upon both technical and economic feasibility ~~considerations;~~considerations.

(4) Recommendations for State government purchases of supplies, ~~vehicles~~ vehicles, and equipment and such operating practices as will make possible more efficient use of ~~energy;~~energy.

(5) Recommendations on energy conservation policies, ~~programs~~ programs, and procedures for ~~local units of government;~~North Carolina energy consumers.

(6) Any other recommendations ~~which~~ that the Energy Policy Council considers to be a significant part of a statewide conservation effort and ~~which~~ that include provisions for sufficient incentives to further energy ~~conservation;~~conservation.

(7) An economic and environmental impact analysis of the recommended ~~program.~~Plan.

(d) The ~~Energy Management Plan~~ recommendations in the State Energy Plan that address energy analysis and assessment shall encourage the most efficient use of sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable, or uneconomical sources of energy. These recommendations shall include but not be limited to the following:

(1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy ~~supply;~~supply.

(2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of ~~consumption;~~consumption and its effect upon jobs.

(3) An independent analysis, in ~~five-, 10- and 20-year~~ five- and 10-year forecasts, of future energy production, supplies and consumption for North Carolina in relation to forecasts of statewide population growth and economic ~~expansion;~~expansion.

(4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the ~~State;~~State.

(5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North ~~Carolina;~~Carolina.

(6) An assessment of the social, ~~economic~~ economic, and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply ~~limitations;~~limitations.

(7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next ~~five-, 10- and 20-year~~ five- and 10-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(e) The Energy Policy Council ~~shall, in accordance with the provisions of this Article,~~ shall develop a written contingency and emergency ~~plans to deal with~~ plan that addresses possible shortages of energy in order to protect the public health, ~~safety~~ safety, and ~~welfare, such plans to be compiled into an Emergency Energy Program.~~welfare.

~~(f)~~ ~~The Energy Policy Council shall encourage.~~In developing the contingency and emergency plan under this subsection, the Energy Policy Council shall:

(1) Encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major ~~producers~~ producers, or by an association of such companies, the joint plans or analyses may be submitted to the Energy Policy Council in lieu of information required ~~pursuant to subsection (b) of this section.~~under G.S. 113B-23(d).

~~(g)~~ ~~The Energy Policy Council shall collect~~

(2) Collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

~~(h) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy.~~

(3) ~~Provisions also shall be made in said program to~~ Include provisions in the contingent and emergency plan that differentiate curtailment of energy consumption by users on the basis of ability to accommodate such ~~curtailments, and shall also include, but not be limited to, the following:~~curtailments. These provisions shall address at least all of the following:

~~(1)~~a. A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate ~~responses;~~responses.

~~(2)~~b. Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and ~~regulations;~~regulations.

~~(3)~~c. Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving ~~measures;~~measures.

~~(i) The Energy Policy Council shall carry~~

(4) Carry out ~~such~~ any investigations and studies ~~as~~ that are necessary to determine if and when potentially serious shortages of energy are likely to affect North ~~Carolina and the Council shall make~~Carolina.

(5) Make recommendations to the Governor concerning administrative and legislative actions required to avert such ~~shortages, such recommendations to be included as a section of the Emergency Energy Program.~~shortages.

~~(j) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include~~

(6) Develop procedures, ~~rules~~ rules, ~~and regulations~~ and agency administrative responsibilities ~~for implementation, and shall further contain procedures~~ to implement the contingency and emergency plan and develop procedures, to be included in the contingency and emergency plan, for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. ~~Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.~~

(k) The Energy Policy Council shall develop the research and development component of the State Energy Plan. In developing this component of the State Energy Plan, the Energy Policy Council shall ~~encourage, through its activities,~~encourage research studies and projects ~~which~~ that are related to energy conservation and management and to the development of alternative and renewable energy technologies.

~~(l)~~ ~~The~~ In addition, the Council ~~shall develop~~ shall:

(1) Develop and coordinate a statewide program of research and development in energy related matters and shall give priority in encouraging and supporting such efforts to those areas of energy research and development which are of particular importance to North Carolina.

~~(m) The Council shall serve~~

(2) Serve as the central repository within State government for the collection and storage of data and information on energy-related matters. ~~To this end the Council shall develop an energy information reporting system for use by all governmental agencies and by the general public.~~

~~(n) The Council shall review~~

(3) Review and coordinate all State agency research and planning relating to energy in an effort to reduce duplication of work and shall be the lead State agency for coordination of energy matters with local government, regional organizations, other states and the federal government.

~~(o) The Council may request~~

(4) Request and utilize the advice, information and services of all State, regional, local and federal agencies and shall cooperate with the President of the United States and all said agencies in matters relating to energy research, programs and policy.

(p) In addition to specific conservation recommendations, the ~~Energy Efficiency Program~~State Energy Plan shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended ~~program,~~Plan, the Council shall arrange for its distribution to interested parties and shall make the ~~program~~ Plan available to the public and the Council further shall ~~set a date for~~hold one or more public ~~hearing~~ hearings on ~~said program.~~the draft recommended State Energy Plan.

(q) Upon completion of the ~~Energy Efficiency Program,~~State Energy Plan, the Council shall transmit ~~said program, to be known as the State Energy Efficiency Program,~~the Plan to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United

States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(r) ~~The~~ Once the State Energy Plan is approved under subsection (q) of this section, the Governor shall transmit the ~~approved Energy Efficiency Program~~State Energy Plan to the President of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize ~~such plan~~ the State Energy Plan and make it available to all units of local government and to the public at large.

(s) At least every ~~two~~ four years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the ~~Energy Efficiency Program,~~State Energy Plan, transmitting ~~such~~ the revised plan to the Governor pursuant to the procedures contained in subsections ~~(e) and (f)~~ (q) and (r) of this section.

"**§ 113B-11. Powers and authority.**

(a) The Energy Policy Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

(b) To assure the adequate development of relevant energy information, ~~as provided in G.S. 113B-10,~~ the Council may require all energy producers and major energy consumers, as determined by the Council, to file such reports and forecasts and at such dates as the Council may request; provided, however, that the Council may request only specific energy-related information which it deems necessary to carry out its duties as defined in Articles 1 and 2 of this Chapter.

(c) The Council shall have authority to apply for and utilize grants, contributions and appropriations in order to carry out its duties as defined in Articles 1 and 2 of this Chapter, provided, however, that all such applications and requests are made through and administered by the Department of Administration.

(d) The Council shall have authority to request said Department to allocate and dispense any funds made available to the Council for energy research and related work efforts in such a manner as the Council desires subject only to the stipulation that said funds be reasonably used in furtherance of the purposes of this Article.

(e) The Department of Administration shall provide the staffing capability to the Energy Policy Council so as to fully and effectively develop recommendations for a comprehensive State ~~energy policy~~ Energy Plan as contained in the provisions of this Article. The Utilities Commission is hereby authorized to make its staff available to the Council to assist in the development of a State ~~energy policy.~~Energy Plan.

(f) Annual funding to the State Energy Office shall be provided by the Department of Administration from the General Fund.

(g) The Governor shall have the authority to accept, administer and enforce federal programs, program measures, and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to

management of energy ~~resources.~~resources and to actions necessary to deal with an actual or impending energy shortage.

(h) The Governor shall have the authority to accept, ~~administer~~ administer, and enforce the delegation of authority delegated to the State by the Emergency Petroleum Allocation Act and the Emergency Energy Conservation Act of 1979 and any orders, rules, and regulations issued pursuant to those acts as well as any succeeding federal programs, program measures, laws, orders, or regulations relating to the allocation, conservation, consumption, ~~management~~ management, or rationing of energy resources.

(i) The Governor shall have the authority to accept, ~~administer~~ administer, and enforce federal programs, program ~~measures~~ measures, and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, ~~which~~ that pertain to actions necessary to deal with an actual or impending energy shortage.

"**§ 113B-12. Annual reports; contents.**

(a) ~~Beginning January 1, 1977, and every year thereafter,~~No later than January 1 of each year, the Energy Policy Council shall transmit to the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the Utilities ~~Commission~~ Commission, and the appropriate chairmen of the House and Senate committees concerned with energy matters, a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The annual report under subsection (a) of this section shall include, but not be limited to, the following:

~~(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;~~

~~(2) The level of statewide and multi-county regional energy demand for a five-, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;~~

~~(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;~~

~~(4) An analysis and evaluation of the means by which the projected annual growth rate of energy demand may be reduced, together with an estimate of the amount of such reduction to be obtained by each of the means analyzed and evaluated;~~

~~(5) The status of the Council's ongoing energy research and development program and an assessment of the energy research and planning efforts carried out in North Carolina;~~

~~(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;~~

~~(7) A summary of the Council's activities since its inception, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium.~~

(8) Trends from the State Energy Plan that impact the State's energy supply and energy use and analyses of these trends.

(9) Priorities recommended by the Energy Policy Council the previous year.

(10) Priorities recommended by the Energy Policy Council for the coming year.

(11) A summary, related in terms of each component of the State Energy Plan, of projects of the State Energy Office of the Department of Administration.

(12) An analysis of the impacts of the projects summarized under subdivision (11) of this subsection.

"Article 2.

"Energy Crisis Administration.

"§ 113B-20. Definition; declaration of energy crisis.

(a) "Energy crisis". – An energy crisis exists when the health, welfare or safety of the citizens of North Carolina are threatened by reason of an actual or impending acute shortage in usable, necessary energy resources.

(b) Declaration by Governor. – Upon a finding by the Governor that the conditions stated in subsection (a) do exist, the Governor may declare the existence of an energy crisis.

"§ 113B-21. Creation of Legislative Committee on Energy Crisis Management.

(a) ~~There is hereby created a~~The Legislative Committee on Energy Crisis Management is created to consist of the Speaker, as chairman, the Speaker pro tempore of the House of Representatives and the President pro tempore and the majority leader of the Senate. The Lieutenant Governor shall serve as a nonvoting ex officio member, provided, however, that he shall vote to break a tie.

(b) The Legislative Committee shall convene within 24 hours following the declaration of an energy crisis, as provided in G.S. 113B-20.

(c) Members of the Legislative Committee shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

"§ 113B-22. Procedures for adopting emergency proposals; emergency powers.

(a) Upon the declaration of an energy crisis, the Governor shall submit to the Legislative Committee for its prompt consideration such emergency orders, rules and regulations as deemed necessary to alleviate the effects of the energy crisis.

(b) The Governor shall immediately consult with the Legislative Committee about the emergency proposals. The emergency orders, rules, or regulations shall become effective at a time specified by the Governor, but no earlier than 48 hours after submission to the Legislative Committee, provided that they may take effect at an earlier time if approved by a majority vote of the Council of State after the Council makes a finding that the crisis is of such immediacy as to make delay for legislative review cause for probable harm to the public.

(c) No order, rule, or regulation promulgated under the provisions of this section shall remain in effect for more than 30 days unless the Governor consults with the Legislative Committee. Such consultation is separate and apart from the consultation required by subsection (a) of this section, and may not take place until the order, rule, or regulation has been in effect for at least seven days.

(d) The Governor's orders, rules and regulations, promulgated, subject to consultation with the Legislative Committee, pursuant to this section, may also include, by way of further enumerated example rather than limitation, provisions for the establishment and implementation of programs, controls, standards, priorities, and quotas for the allocation, conservation and consumption of energy resources; the suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to water and air quality control and the hours and days during which public buildings may or may not be required to remain open; and the establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities.

"**§ 113B-23. Administration of plans and procedures.**

(a) Upon the declaration of an energy ~~crisis, pursuant to~~ crisis under G.S. 113B-20, the Energy Policy Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages;

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the Energy Policy Council, to carry out its responsibilities pursuant to this section;

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy Policy Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce ~~the Emergency Energy Program pursuant to G.S. 113B-9 and~~ any emergency rules, ~~orders~~ orders, or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be

reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22.

(d) ~~Within four months of July 1, 1975:~~ Upon the declaration of an energy crisis:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy Policy Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer doing business in this State as determined by the Energy Policy Council shall prepare and submit to the Energy Policy Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(3) Each major renewable and alternative energy provider, as determined by the Energy Policy Council, shall assess stock and shall inventory available facilities and resources.

"**§ 113B-24. Enforcement; penalties for violations.**

(a) The Attorney General and the law-enforcement authorities of the State and its political subdivisions shall enforce the provisions of this Article and all orders, rules and regulations promulgated pursuant to G.S. 113B-22.

(b) Any person who violates this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 or knowingly or willfully submits false information in any report required herein shall be guilty of a Class 1 misdemeanor.

(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy Policy Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 3. Appointments of members to the Energy Policy Council under G.S. 113B-3, as amended by Section 2 of this act, and designation of a chairman to the Energy Policy Council under G.S. 113B-4, as amended by Section 2 of this act, shall be made no later than January 31, 2006.

SECTION 4. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 756

Short Title:	Revise Building Commission Membership.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MEMBERSHIP OF THE STATE BUILDING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.25 reads as rewritten:

"**§ 143-135.25. State Building Commission – Creation; staff; membership; appointments; terms; vacancies; chairman; compensation.**

(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management program and to perform the duties created under this Article.

(b) The State Construction Office of the Department of Administration shall provide staff to the State Building Commission. The chairman of the Commission shall provide direction to the State Construction Office on its work for the Commission.

The director of the State Construction Office shall be a registered engineer or licensed architect and shall be technically qualified by educational background and professional experience in building design, construction, or facilities management. The administrative head shall be appointed by the Secretary of the Department of Administration.

(c) The Commission shall consist of ~~nine~~ 12 members qualified and appointed as follows:

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General

Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(9) A representative of local government, chosen from among not more than two persons nominated by the North Carolina Association of County Commissioners and two persons nominated by the North Carolina League of Municipalities, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(10) A building contractor or subcontractor whose primary business is or was the construction of commercial or industrial buildings or facilities, or an employee of a building contractor or subcontractor whose primary business is or was the construction of commercial or industrial buildings or facilities, chosen from among not more than three persons nominated by the Associated Builders and Contractors of the Carolinas, appointed by the General Assembly upon the

recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(11) A building contractor or subcontractor whose primary business is or was the construction of buildings and whose business is designated a minority business by the Department of Administration, or an employee of a building contractor or subcontractor whose primary business is or was the construction of buildings and whose business is designated a minority business by the Department of Administration, appointed by the Governor.

(12) A licensed attorney who is a member of the Construction Law Section of the North Carolina Bar Association and whose primary practice is in construction law, chosen from among not more than three persons nominated by the Construction Law Section of the North Carolina Bar Association, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. The initial term of the member appointed pursuant to subdivision (10) of this subsection shall expire June 30, 2006. The initial term of the member appointed pursuant to subdivision (11) of this subsection shall expire June 30, 2007. The initial term of the member appointed pursuant to subdivision (12) of this subsection shall expire June 30, 2008. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected.

(d) The Commission shall meet at least four times a year on or about January 15, April 15, July 15, and October 15. The Commission shall also meet upon the call of the chairman, or upon call of at least five members. The Secretary of State shall call the first meeting within 30 days of the effective date of this act; the first order of business at the first meeting shall be the election of a chairman by the Commission.

(e) Members of the Commission who are not State officers or employees shall receive per diem of one hundred dollars ($100.00) a day when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. Members

who are State officers or employees shall be reimbursed for travel and subsistence as provided in G.S. 138-6."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 615

Short Title:	Insurance Technical Corrections.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Commerce.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE INSURANCE LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-58-310 is repealed.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 884

Short Title:	State Traditional Pottery Birthplace.	(Public)
Sponsors:	Senators Tillman; Allran, Atwater, Berger of Franklin, Bingham, Blake, Boseman, Brock, Brown, Clodfelter, Cowell, East, Garwood, Goodall, Holloman, Hoyle, Jacumin, Kinnaird, Presnell, Smith, and Snow.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT RECOGNIZING THE SEAGROVE AREA AS THE BIRTHPLACE OF NORTH CAROLINA TRADITIONAL POTTERY.

Whereas, the art of crafting traditional pottery in North Carolina began around 1750 in the Seagrove area, which today includes portions of Randolph, Chatham, Moore, and Montgomery Counties; and

Whereas, this craft has been carried on for 200 years and, in some cases, by people who represent the eighth and ninth generation of potters in their families; and

Whereas, early families of the Seagrove area associated with North Carolina traditional pottery included the Chriscoe, Cole, Craven, Luck, McNeill, Owen, and Teague families; and

Whereas, the pottery craft is a tradition that encompasses both aesthetic and utilitarian elements in its design; and

Whereas, the annual Seagrove Pottery Festival has become the premier traditional pottery event in the State; and

Whereas, during the festival, thousands of people are drawn to pottery displays, demonstrations of pottery making, and the pottery auction; and

Whereas, plans have been made to establish the Museum of North Carolina Traditional Pottery to preserve and perpetuate the history and tradition of North Carolina traditional pottery; and

Whereas, Seagrove is considered the State's pottery capital; and

Whereas, it is fitting to recognize the Seagrove area as the birthplace of North Carolina traditional pottery; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"**§ 145-22. State birthplace of traditional pottery.**

The Seagrove area, including portions of Randolph, Chatham, Moore, and Montgomery Counties, is designated as the official location of the birthplace of North Carolina traditional pottery."

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

SENATE BILL 884:
State Traditional Pottery Birthplace

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	April 27, 2005
Introduced by:	Sen. Tillman	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 884 would recognize the Seagrove area of the State as the birthplace of North Carolina traditional pottery.

BILL ANALYSIS: Senate Bill 884 would recognize the Seagrove area of North Carolina, which includes portions of Randolph, Chatham, Moore, and Montgomery Counties, as the official birthplace of North Carolina traditional pottery because the art began there over 200 years ago and because of the area's history of promoting and preserving the pottery craft.

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

S0884e1-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 603

Short Title:	Light-Duty Road Exemption-Building Supplies.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Commerce.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE TRANSPORTATION OF CERTAIN BUILDING SUPPLIES AND EQUIPMENT FROM THE LIGHT-DUTY ROAD WEIGHT LIMITATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c)(4) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(4) A truck or other motor vehicle shall be exempt from ~~such~~ the light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry ~~by-products or~~ by-products, a business engaged in the harvest or processing of ~~seafood~~ seafood, or when transporting supplies, material, or equipment necessary for the construction of housing or land development when the destination of ~~such~~ the vehicle and load is located solely upon ~~said~~ the light-traffic road."

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

SENATE BILL 603:
Light-Duty Road Exemption-Building Supplies

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	April 28, 2005
Introduced by:	Sen. Jenkins	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 603 would exempt vehicles transporting building supplies and equipment from light-traffic road weight limits when the destination of the vehicle is located on the light-traffic road.

CURRENT LAW: G.S. 20-118 sets out weight limits for vehicles operating on State highways, and it authorizes the Department of Transportation to establish "light-traffic roads" with weight limits that are lower than the statutory limits when, in the opinion of the Department, the road is inadequate to carry and will be injuriously affected by vehicles carrying the maximum weight.

There are currently several exemptions from the light-traffic road limits, including:

- Vehicles transporting supplies, material, or equipment for certain farming operations and for businesses engaged in the harvest or processing of seafood when the destination of the vehicle is located on the light-traffic road.
- Vehicles transporting certain items from a point of origin on a light-traffic road to one of two nearest highways that is not a light-traffic road (items include seafood, meats or agricultural crop products, forest products, livestock or poultry, recyclable material, garbage, treated sludge from a wastewater treatment facility, apples, and Christmas trees).

The Department is authorized to abrogate these exemptions upon a determination that undue damage to a light-traffic road is resulting from the exempted vehicles.

BILL ANALYSIS: Senate Bill 603 would add vehicles transporting supplies, material, or equipment necessary for the construction of housing or land development to the list of vehicles exempted from light-traffic road weight limits when the destination of the vehicle is located on the light-traffic road.

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

S0603e1-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 445

Short Title:	Insurance Premium Discount/Prevention Course.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Commerce.	

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AUTOMOBILE INSURANCE PREMIUM DISCOUNTS OF AT LEAST TEN PERCENT FOR CERTAIN PERSONS WHO COMPLETE ACCIDENT PREVENTION COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-66. Private passenger motor vehicle insurance premium rate reduction for completion of accident prevention course.**

(a) The classification plan promulgated pursuant to G.S. 58-36-65 shall provide for a reduction in premium rates of at least ten percent (10%) for liability and physical damage coverages to those insureds 55 years of age or older who successfully complete motor vehicle accident prevention courses approved by the Commissioner of Motor Vehicles. Those insureds shall qualify for the reduction for a three-year period after the policy issuance or renewal that follows the completion of the course. Each insured shall successfully complete an approved course every three years to be eligible for the reduction.

(b) Upon successfully completing an approved course, each insured shall be issued a completion certificate by the course's sponsor, on a form approved by the Commissioner of Motor Vehicles, which shall be the only acceptable evidence of qualification for the reduction in rates.

No reduction in rates shall be allowed for any of the following:

(1) Self-instructed courses.

(2) Courses that do not provide actual classroom instruction for the minimum number of hours prescribed by the Commissioner of Motor Vehicles.

(3) Any course required to be taken by:

a. A court order;

b. A Division of Motor Vehicles order or regulation; or

c. A statutory mandate.

(c) An insured who has more than two Safe Driver Incentive Plan points assessed against the insured is not eligible for the reduction in premium rates provided for in this section. The insured's ineligibility shall continue until the insured no longer has more than two Safe Driver Incentive Plan points and the insured successfully completes an approved course.

(d) Insurers that write nonfleet private passenger motor vehicle insurance may deviate from the reduction promulgated by the Bureau and approved by the Commissioner to provide a greater discount as approved by the Commissioner.

(e) The provisions of this section shall not apply to rates used on motor vehicle insurance policies reinsured by the North Carolina Motor Vehicle Reinsurance Facility under Article 37 of this Chapter."

SECTION 2. The North Carolina Rate Bureau shall promulgate a revision to the classification plan to implement this act. The Bureau shall file the revision with the Commissioner of Insurance no later than September 1, 2005, and the revision shall become effective January 1, 2006.

SECTION 3. Sections 2 and 3 of this act are effective when it becomes law. The remainder of this act becomes effective January 1, 2006, and applies only to nonfleet private passenger motor vehicle insurance policies that are issued or renewed on and after January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 823

Short Title:	Insurance Discount for Safe Driving Class.	(Public)
Sponsors:	Senators Jenkins; and Bingham.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA RATE BUREAU AND THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO REQUIRE INSURANCE COMPANIES TO GIVE INSURANCE DISCOUNTS TO PERSONS WHO COMPLETE DRIVER SAFETY COURSES OR PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. The Commissioner of Insurance and the North Carolina Rate Bureau shall adopt rules that mandate insurance companies to give insurance discounts to persons who complete driver safety courses or programs. Rules shall be adopted pursuant to this act by January 1, 2006.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 823
PROPOSED COMMITTEE SUBSTITUTE S823-CSRG-15 [v.4]

4/28/2005 10:40:33 AM

Short Title: Insurance Discount for Safe Driving Class. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA RATE BUREAU AND THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO REQUIRE INSURANCE COMPANIES TO GIVE INSURANCE DISCOUNTS TO PERSONS WHO COMPLETE DRIVER SAFETY COURSES OR PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Rate Bureau shall develop and submit, in accordance with G.S. 58-36-65, rules that mandate insurance discounts to persons who complete driver safety courses or programs. Rules shall be adopted pursuant to this act by January 1, 2006.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 823
PROPOSED COMMITTEE SUBSTITUTE S823-PCS55220-RG-15

Short Title: Insurance Discount for Safe Driving Class. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA RATE BUREAU AND THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO REQUIRE INSURANCE COMPANIES TO GIVE INSURANCE DISCOUNTS TO PERSONS WHO COMPLETE DRIVER SAFETY COURSES OR PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Rate Bureau shall develop and submit, in accordance with G.S. 58-36-65, rules that mandate insurance discounts to persons who complete driver safety courses or programs. Rules shall be adopted pursuant to this act by January 1, 2006.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 907

Short Title:	Minority Business Certification.	(Public)
Sponsors:	Senators Dorsett; and Graham.	
Referred to:	Commerce.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING THE SECRETARY OF ADMINISTRATION TO ADOPT RULES AND PROCEDURES TO CERTIFY UNDERUTILIZED AND MINORITY BUSINESSES AND TO MAINTAIN A DATABASE OF THE BUSINESSES CERTIFIED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-48 is amended by adding the following new subsection to read:

"**§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.**

...

(d1) The Secretary of Administration shall adopt rules and procedures for: (i) the certification of a business under this section as a Historically Underutilized Business; and (ii) the creation and maintenance of a database of the businesses certified. The database shall be created and maintained by the Department of Administration, Office of Historically Underutilized Business, and shall include the necessary procedures and rules for certification under this section."

SECTION 2. G.S. 143-128.3 is amended by adding the following new subsection to read:

"**§ 143-128.3. Minority business participation administration.**

...

(e1) The Secretary shall adopt rules and procedures for: (i) the certification of a minority business contractor, as defined in G.S. 143-128.2(g), as a Historically Underutilized Business; and (ii) the creation and maintenance of a database of the businesses certified. The database shall be created and maintained by the Department of Administration, Office of Historically Underutilized Business, and shall include the necessary procedures and rules for certification as a Historically Underutilized Business."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 907
PROPOSED COMMITTEE SUBSTITUTE S907-CSRU-23 [v.2]

4/27/2005 8:45:13 PM

Short Title: Minority Business Certification. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING THE SECRETARY OF ADMINISTRATION TO ADOPT RULES AND PROCEDURES TO CERTIFY HISTORICALLY UNDERUTILIZED AND BUSINESSES AND TO MAINTAIN A DATABASE OF THE BUSINESSES CERTIFIED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-48 is amended by adding the following new subsection to read:

"**§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.**

...

(d1) The Secretary of Administration shall adopt rules and procedures for: (i) the certification of a business under this section as a historically underutilized business; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses. The database shall be created and maintained by the Department of Administration, Office of Historically Underutilized Business, and shall include the necessary procedures and rules for certification under this section."

SECTION 2. G.S. 143-128.3 is amended by adding the following new subsection to read:

"**§ 143-128.3. Minority business participation administration.**

...

(e1) The Secretary shall adopt rules and procedures for: (i) the certification of a minority business contractor, as defined in G.S. 143-128.2(g), as a historically underutilized business; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses. The database shall be created and maintained by the Department of Administration, Office of Historically

Underutilized Business, and shall include the necessary procedures and rules for certification as a historically underutilized business."

SECTION 3. Article 8 of Chapter 143 is amended by adding a new section to read:

"**§ 143-128.4. Historically underutilized business defined.**

(a) As used in this chapter, the term "historically underutilized business" means a business that meets all of the following conditions:

(1) At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section.

(2) The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section.

(b) To qualify as a historically underutilized business under this section, a business must be owed and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent resident of the United States who are members of one or more of the following groups:

(1) Black. – A person having origins in any of the black racial groups of Africa.

(2) Hispanic. – A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.

(3) Asian American. – A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.

(4) American Indian. – A person having origins in any of the original Indian peoples of North America.

(5) Female.

(6) Disabled. – A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.

(7) Disadvantaged. – A person who is socially and economically disadvantaged as defined in 15 U.S.C. §637."

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

SENATE BILL 907:
Minority Business Certification

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	April 28, 2005
Introduced by:	Sen. Dorsett	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Co-Counsel
	S907-CSRU-23		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 907 would authorize the Secretary of Administration to adopt rules and procedures to certify historically underutilized businesses and to maintain a database of businesses certified.***

CURRENT LAW: G.S, 143-48 makes it the policy of the State to encourage and promote small historically underutilized business in the purchase of good and services by the State. G.S. 143-128.2 and 143-128.3 require good faith efforts to recruit historically underutilized businesses to participate in public construction projects. Neither of these statutes defines what constitutes a historically underutilized business nor do the statutes give the Secretary of Administration the authority to adopt rules for the certification of historically underutilized businesses.

BILL ANALYSIS: Sections 1 and 2 of the bill add new sections to the law governing State contracts for goods and services and State public construction contracts respectively, authorizing the Secretary of Administration to adopt rules and procedures for certifying historically underutilized businesses and to create and maintain a database of businesses so certified.

Section 3 defines a historically underutilized business is as a business that is at least 51% owned and operated by a person who is a member of one of the listed groups. The groups include blacks, Hispanics, Asian Americans, American Indians, females, persons with disabilities, and persons socially and economically disadvantaged.

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

BACKGROUND: The law has recently been changed to require the Department of Administration, though the Office of Historically Underutilized Business, to collect information on the use of historically underutilized businesses in State contracts and to certify businesses that qualify as historically underutilized businesses, but the Department was not given the authority to adopt rules to implement these requirements.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 907
PROPOSED COMMITTEE SUBSTITUTE S907-PCS85241-RU-23

Short Title: Minority Business Certification. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING THE SECRETARY OF ADMINISTRATION TO ADOPT RULES AND PROCEDURES TO CERTIFY HISTORICALLY UNDERUTILIZED BUSINESSES AND TO MAINTAIN A DATABASE OF THE BUSINESSES CERTIFIED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-48 is amended by adding the following new subsection to read:

"**§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.**

...

(d1) The Secretary of Administration shall adopt rules and procedures for: (i) the certification of a business under this section as a historically underutilized business; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses. The database shall be created and maintained by the Department of Administration, Office of Historically Underutilized Business, and shall include the necessary procedures and rules for certification under this section."

SECTION 2. G.S. 143-128.3 is amended by adding the following new subsection to read:

"**§ 143-128.3. Minority business participation administration.**

...

(e1) The Secretary shall adopt rules and procedures for: (i) the certification of a minority business contractor, as defined in G.S. 143-128.2(g), as a historically underutilized business; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses. The database shall be created and maintained by the Department of Administration, Office of Historically

Underutilized Business, and shall include the necessary procedures and rules for certification as a historically underutilized business."

SECTION 3. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-128.4. Historically underutilized business defined.**

(a) As used in this Chapter, the term "historically underutilized business" means a business that meets all of the following conditions:

(1) At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section.

(2) The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section.

(b) To qualify as a historically underutilized business under this section, a business must be owned and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:

(1) Black. – A person having origins in any of the black racial groups of Africa.

(2) Hispanic. – A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.

(3) Asian American. – A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.

(4) American Indian. – A person having origins in any of the original Indian peoples of North America.

(5) Female.

(6) Disabled. – A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.

(7) Disadvantaged. – A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 879

Short Title:	Economic Development - NC Product Preference.	(Public)
Sponsors:	Senators Garrou; Dalton and Goodall.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR A BIDDING PREFERENCE ON STATE CONTRACTS FOR RESIDENT BIDDERS IN CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE MAINTENANCE OF A RESIDENT BIDDER LIST.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2001-240 reads as rewritten:

"**SECTION 3.** This act becomes effective January 1, ~~2002, and expires December 31, 2007.~~2002."

SECTION 2. G.S. 143-49 is amended by adding a new subdivision to read:

"(9) To establish and maintain a list of resident bidders who have expressed an interest in bidding on contracts for specific goods or services enumerated by the bidder."

SECTION 3. G.S. 143-59 is amended by adding a subsection to read:

"(f) Resident Bidder Notification. – When the Secretary puts a contract up for competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who have expressed an interest in bidding on contracts of that nature. The Secretary may opt to provide notice under this section by electronic means only."

SECTION 4. This act becomes effective January 1, 2006.

SENATE BILL 879:
Economic Development - NC Product Preference

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	April 28, 2005
Introduced by:	Sen. Garrou	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Co-Counsel
	S879-CSRU-16		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 879 would repeal the sunset on a statute giving preference to North Carolina products for State purchases, and establishes a process to give North Carolina bidders notice of opportunities to bid on State contracts for purchase and contracts for which they might be interested.***

CURRENT LAW: G.S. 143-59 currently gives a preference for the purchase of North Carolina products purchased by State agencies and provides for a percentage increase in the bid of a non-North Carolina bidder if the home state of the non-North Carolina bidder adds a percentage increase on North Carolina bidders in that state. This statute is scheduled to sunset on January 1, 2007.

BILL ANALYSIS: Section 1 of the bill removes the sunset on G.S. 143-59. (Attached)

Section 2 requires the Secretary of Administration to establish and maintain a list of resident bidders that pay unemployment or income taxes in the State and whose principal place of business is in the State who have expressed an interest in bidding on contracts for specific goods and services to be purchased by the State.

Section 3 adds a subsection to G.S. 143-59 to require the Secretary of Administration to notify all resident bidders who has expressed an interest in bidding on contracts of the nature the Secretary is putting to bid. This section allows the notice to be sent electronically.

EFFECTIVE DATE: The bill becomes effective January 1, 2006.

§ 143-59. (Effective until December 31, 2007) Preference given to North Carolina products and citizens, and articles manufactured by State agencies; reciprocal preferences.

(a) Preference. – The Secretary of Administration and any State agency authorized to purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods, supplies, materials, equipment, printing or services give preference as far as may be practicable to such products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution.

(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars ($25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a

nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration may, after consultation with the Board of Awards, waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration and the Board of Awards shall consider factors that include competition, price, product origination, and available resources.

(c) Definitions. – The following definitions apply in this section:

(1) Resident bidder. – A bidder that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State.

(2) Nonresident bidder. – A bidder that is not a resident bidder as defined in subdivision (1) of this subsection.

(3) Principal place of business. – The principal place from which the trade or business of the bidder is directed or managed.

(d) Exemptions. – Subsection (b) of this section shall not apply to contracts entered into under G.S. 143-53(a)(5) or G.S. 143-57.

(e) When a contract is awarded by the Secretary using the provisions of subsection (b) of this section, a report of the nature of the contract, the bids received, and the award to the successful bidder shall be posted on the Internet as soon as practicable. (1931, c. 261, s. 10; 1933, c. 441, s. 2; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 2001-240, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 879
PROPOSED COMMITTEE SUBSTITUTE S879-CSRU-24 [v.1]

4/27/2005 9:27:01 PM

Short Title: Economic Development - NC Product Preference. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR A BIDDING PREFERENCE ON STATE CONTRACTS FOR RESIDENT BIDDERS IN CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE MAINTENANCE OF A RESIDENT BIDDER LIST.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2001-240 reads as rewritten:

"**SECTION 3.** This act becomes effective January 1, ~~2002, and expires December 31, 2007.~~2002."

SECTION 2. G.S. 143-49 is amended by adding a new subdivision to read:

"(9) To establish and maintain a list of resident bidders, as defined in G.S. 143-59(c), who have expressed an interest in bidding on contracts for specific goods or services enumerated by the bidder."

SECTION 3. G.S. 143-59 is amended by adding a subsection to read:

"(f) Resident Bidder Notification. – When the Secretary puts a contract up for competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who have expressed an interest in bidding on contracts of that nature. The Secretary may opt to provide notice under this section by electronic means only."

SECTION 4. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 879
PROPOSED COMMITTEE SUBSTITUTE S879-PCS85242-RU-24

Short Title: Economic Development - NC Product Preference. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR A BIDDING PREFERENCE ON STATE CONTRACTS FOR RESIDENT BIDDERS IN CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE MAINTENANCE OF A RESIDENT BIDDER LIST.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2001-240 reads as rewritten:

"**SECTION 3.** This act becomes effective January 1, ~~2002, and expires December 31, 2007.~~2002."

SECTION 2. G.S. 143-49 is amended by adding a new subdivision to read:

"(9) To establish and maintain a list of resident bidders, as defined in G.S. 143-59(c), who have expressed an interest in bidding on contracts for specific goods or services enumerated by the bidder."

SECTION 3. G.S. 143-59 is amended by adding a subsection to read:

"(f) Resident Bidder Notification. – When the Secretary puts a contract up for competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who have expressed an interest in bidding on contracts of that nature. The Secretary may opt to provide notice under this section by electronic means only."

SECTION 4. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 783

Short Title:	Report Hacker/Fraudulent Access to ID Data.	(Public)
Sponsors:	Senators Forrester; Allran, Bingham, Brock, Garwood, Goodall, Hunt, Presnell, and Tillman.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT DATA AGGREGATORS AND OTHER BUSINESSES IMMEDIATELY NOTIFY INDIVIDUALS OF UNAUTHORIZED OR FRAUDULENT ACCESS TO PERSONAL INFORMATION FOLLOWING INFORMATION SECURITY BREACHES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 41.

"Personal Information Security Breach Notification Act.

"**§ 66-335. Definitions.**

The following definitions apply in this Article:

(1) Business. – A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this State, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution.

(2) Breach of the security system. – Unauthorized or fraudulent acquisition of computerized data that (i) compromises the security, confidentiality, or integrity of personal information maintained by a business or (ii) could result in identity theft. Good faith acquisition of personal information by an employee or agent of a business for the purposes of the business is not a breach of the security of the system, provided that the personal information is not used or subject to unauthorized disclosure.

(3) Customer. – An individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(4) Data aggregator. – A type of business that compiles personal information on individuals for sale to other businesses and entities, whether or not the individuals have given permission to obtain the personal information.

(5) Individual. – A natural person.

(6) Owns or licenses. – The phrase includes personal information that a business retains as part of the business' internal customer account or for the purpose of using that information in transactions with the person to whom the information relates.

(7) Personal information. – Any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, drivers license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information. Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(8) Records. – Any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted. The term does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

"**§ 66-336. Legislative intent; purposes.**

It is the intent of the General Assembly to protect the personal information of North Carolina residents. The purposes of this Article are (i) to encourage data aggregators, and businesses that own or license personal information about North Carolina customers, to provide reasonable security for personal information and (ii) to provide our citizens with notice of breaches of personal information security so the citizens can better protect themselves from fraud and identity theft.

"**§ 66-337. Protection of personal information required.**

(a) A data aggregator or other business that conducts business in North Carolina and compiles, owns, or licenses personal information about a North Carolina resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information in order to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(b) A business that conducts business in North Carolina and discloses personal information about a North Carolina resident pursuant to a contract with a nonaffiliated third party shall require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information in order to protect the personal information from unauthorized or fraudulent access, destruction, use, modification, or disclosure.

"**§ 66-338. Notice of personal information security breach required; forms of notice; substantial compliance.**

(a) Any data aggregator or other business that conducts business in North Carolina, and that compiles or owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of North Carolina whose unencrypted personal information was or is reasonably believed to have been either acquired by an unauthorized person or by fraudulent means. Except as provided by subsection (b) of this section, the disclosure required shall be made in the most expedient time possible and without unreasonable delay. Any business or data aggregator that maintains computerized data that includes personal information that the business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was or is reasonably believed to have been acquired by an unauthorized person or by fraudulent means.

(b) The notification required by this section may be delayed only if:

(1) A law enforcement agency determines that the notification will impede a criminal investigation or the delay. In this case, the notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(2) The delay is consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(c) For purposes of this section, notice may be provided by one of the following methods:

(1) Written notice to each affected individual by U.S. Mail.

(2) Electronic notice to each affected individual, if the notice provided is consistent with the provisions of Article 40 of this Chapter, the Uniform Electronic Transactions Act.

(3) Substitute notice, if (i) the business demonstrates that the cost of providing notice would exceed one hundred twenty-five thousand dollars ($125,000), (ii) the affected class of subject persons to be notified exceeds 250,000, or (iii) the business does not have sufficient contact information. Substitute notice shall be given when all of the following occur:

a. Electronic mail notice is given when the business has valid e-mail addresses for the subject persons.

b. Conspicuous posting of the notice is placed on the Web site page of the business, if the business maintains one.

c. Notification is provided through major Statewide media.

(d) Notwithstanding the provisions of subsection (c) of this section, a business that is not a data aggregator and that maintains its own customer notification procedures as part of an information security policy for the treatment of personal information that is otherwise consistent with the scope and timing requirements of this section shall be deemed to be in substantial compliance with the notification requirements of this section if the business notifies customers in accordance with its policies in the event of a breach of security of the system.

(e) In addition to, and contemporaneous with, the notice to individuals required by this section, a business shall notify the Consumer Protection Division of the Office of the Attorney General of North Carolina whenever there is a breach of the security system.

"**§ 66-339. Penalties.**

(a) An individual may bring a civil action against a business that fails to provide the notice required by this Article and may recover actual damages resulting from the failure to notify.

(b) Any business that violates this Article shall be liable for civil penalties as follows:

(1) In the amount of one hundred thousand dollars ($100,000) for the first offense.

(2) In the amount of one hundred fifty thousand dollars ($150,000) for the second offense.

(3) In the amount of three hundred thousand dollars ($300,000) for the third and subsequent offenses.

"**§ 66-340. Exceptions.**

(a) The provisions of this Article do not apply to any of the following:

(1) A covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA).

(2) A business that is regulated by any State or federal law providing greater protection to personal information than that provided by this Article in regard to the subjects addressed by this Article. Compliance with that State or federal law shall be deemed compliance with this section with regard to those subjects.

(b) This section does not relieve a business from a duty to comply with any other requirements of other State and federal law regarding the protection and privacy of personal information."

SECTION 2. This act becomes effective January 1, 2006.

SENATE BILL 783:
Report Hacker/Fraudulent Access to ID Data

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	April 28, 2005
Introduced by:	Sen. Forrester	**Summary by:**	Walker Reagan
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 783 would require companies that maintain electronic databases with personal information of customers to immediately notify persons whose personal information is accessed without authorization or fraudulently following a security breach.***

BILL ANALYSIS: Senate Bill 783 would create a new Article 41 in Chapter 66 entitled "Personal Information Security Breach Notification Act".

The new **G.S. 66-335** defines terms used in this Article. Business is defined as any company doing business in anywhere in the US or another country. Breach of security system is defined as an unauthorized or fraudulent acquisition of computerized data that compromises the security, confidentiality or integrity of personal information maintained by a business that could result in identity theft. Personal information is defined as any information that identifies, relates to, describes, or is capable of being associated with a particular individual including identification numbers, personal numbers and account numbers.

G.S. 66-337 requires businesses that conduct business in NC and compile, own or license personal information about NC residents to implement and maintain reasonable security procedures and practices in order to protect the personal information from unauthorized or fraudulent access or disclosure. It also requires a business with this information that contracts with an unaffiliated third party to require by contract that the third party meet the same security requirements.

G.S. 66-338 requires a business to disclose immediately after discovery any breach in security of unencrypted personal information acquired by unauthorized or fraudulent means, to the person whose personal information was acquired. This disclosure is to be made in the most expedient time possible and without unreasonable delay. Notices can be sent by US mail, electronic mail, and in the case where the cost of notice exceeds $125,000 or the number of persons to be notified exceeds 250,000, by posting on a business Website and notification through major Statewide media. Notice is also to be given to the Consumer Protection Division of the Attorney General's Office.

G.S. 66-339 sets out the penalties for a violation of this Article. An individual may sue a business that fails to give the notice required by this law for the actual damages resulting from the failure to notify. A business that violates this Act (which includes the failure to properly protect the personal information or give notice as required) may be fined $100, 000 for a first offense, $150,000 for a second offense and $300,000 for a third or subsequent offense.

It is not clear who has a right to ask that fines be imposed, how these fines can be imposed (by the court or an administrative agency), or whom the fines are to benefit.

G.S. 66-340 exemptions from the provisions of the act a covered entity governed by the medical privacy and security rules of the federal Department of Health and Human Services, and a business that is regulated by any State or federal law that provides greater protection of personal information. This law does not relieve the business of duty to comply with other laws regarding protection and privacy of personal information.

EFFECTIVE DATE: The bill is effective January 1, 2006.

S0783e1-SMRU

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

April 28, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Bridget L. Wall	DOA / HUB office
[signature]	Bond & Assoc.
David Crawford	AIA North Carolina
Don McCorquodale	SAS
[signature]	NMRS
Bill Rowe	NC Justice Ctr.
JAMES CROUCH	JAMES, McELROY & DIEHL

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Don Taylor	AARP - Raleigh, NC
Helen Savage	AARP
Joe Mangum	AARP
Ava Taylor	AARP - Raleigh, NC
Lisa Martin	NC Home Builders Assoc.
R. Paul Wilms	NCHBA
[illegible]	IFNC
Mary Thomsen	REBIC
Erin Kinsey	NC Conservation Network
Johanna Reese	DENR
Robert Pritchard	Young, Moore

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Lacy Love	NCDOT
Betty Tuerck	Bank of America
Kathy Hawkes	Progress Energy
Jami Fitzgerald	NC Family Policy Council
Joan Perry	Duke Energy
John McAlister	Duke Energy
BILL ARLE	ACLI
Alice Garland	NCDOC
Richard Thompson	Dominion
Bill McAuley	PSNC Energy
Tripp Melton	Sen. Stevens office

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kary Iserhour	Sen Berger's office
Shaila Talton-DeWitt	JWP Civitas Institute
David Stoller	State Farm
Bob Gillam	Public Staff - NCUC
BRAD RIVERS	GASTON COLLEGE SMALL BUSINESS CENTER
VICTOR DAU	RANDOLPH COMMUNITY COLLEGE/SMALL BUSINESS CTR. P.O. BOX 1009 ASHEBORO, NC 27204
Matt Magne	Cape Fear Community College Small Business Center 411 S. Front St. Wilm, NC 28401
Chris Kukla	Self-Help - Durham

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Bradley	Gov. office
John Mabe	Gov office
ANDREW W Halpin	Sen. Garrou office
Lee Hyde	KCLH
Ron Ottaro	Wachovia
Kathleen Edwards	UNC-CH Legis. Reporting Service
Robert Albright	CED
DAVE Simpsin	Carolinas AGC
Ron Kaylor	Kaylor Law Firm
George Millsaps	DOA
Carlton Myrick	DOA

Senate Commerce Committee
Tuesday, May 10, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SJR 1172	Utilities Comm. Appointment.	Senator Soles, Jr.
SB 522	Extend Building Code Pilot Program.	Senator Clodfelter
SB 974	Alcohol Sales-Campus Performing Arts Centers.	Senator Dannelly

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, May 10, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on May 10, 2005, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Samantha Kessler from Oxford, sponsored by Senator A. B. Swindell; Channing Carter from Greensboro, sponsored by Senator Kay Hagan; Joel Sullivan from Goldsboro, sponsored by Senator Fred Smith; and Gregory Cutler from Frisco, sponsored by Senator Marc Basnight.

Senator Soles then moved adoption of a committee substitute for SJR 1172, Utilities Comm. Appointment. The motion carried. He introduced Mr. Franklin Freeman, who on behalf of Governor Mike Easley presented Mr. Robert V. Owens, Jr., as the Governor's candidate for reappointment to the Utilities Commission for a term beginning July 1, 2005 and ending June 30, 2013, and asked that he be confirmed. Mr. Owens spoke to the committee, requesting confirmation of his reappointment. Senator Soles referred to letters of endorsement from Ms. Jo Anne Sanford, Chair of the Commission, and from Mr. Richard Conder, Commissioner, and placed them in the committee record. Senator Doug Berger moved an unfavorable report of the joint resolution, but favorable as to the committee substitute joint resolution. The motion carried.

Senator Soles introduced Senator Daniel Clodfelter to explain SB 522, Extend Building Code Pilot Program. Senator Phil Berger moved a favorable report of the bill. The motion carried.

Senator Soles introduced Senator Charlie Dannelly to explain SB 974, Alcohol Sales-Campus Performing Arts Centers. Senator Tom Apodaca moved a favorable report of the bill. The motion carried.

The meeting adjourned at 11:25 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 12, 2005

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

FAVORABLE

S.B. **522** Extend Building Code Pilot Program.
Sequential Referral: None
Recommended Referral: None

S.B. **974** Alcohol Sales-Campus Performing Arts Centers.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 11, 2005

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

UNFAVORABLE AS TO JOINT RESOLUTION, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE JOINT RESOLUTION

S.JR. **1172** Utilities Comm. Appointment.

Draft Number:	PCS55228
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE JOINT RESOLUTION 1172

Sponsors: Senator Soles.

Referred to: Commerce.

May 2, 2005

A JOINT RESOLUTION FOR THE CONFIRMATION OF THE REAPPOINTMENT OF ROBERT V. OWENS TO THE UTILITIES COMMISSION.

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

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2005, by expiration of term; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Robert V. Owens, to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2005, and expire June 30, 2013; Now, therefore,

Be it resolved by the Senate, the House of Representative, concurring:

SECTION 1. The appointment of Robert V. Owens to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

SJR 1172: Robert V. Owens, Jr. Utilities Comm. Appointment

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 10, 2005
Introduced by:	Sen. Soles	**Summary by:**	Steven Rose
Version:	PCS S1172-CSRL-22		Committee Counsel

SUMMARY: ***Robert V. Owens, Jr. has been appointed by the Governor to a second term on the Utilities Commission. If confirmed by the General Assembly, Mr. Owens' second term will commence July 1, 2005 and expires June 30, 2013. SJR 1172 confirms this appointment as required by G.S. 62-10. The resolution is effective upon ratification.***

Mr. Owens' biographical narrative, and the Statement of Economic Interest, including supplements to the current year, he submitted to the North Carolina Board of Ethics are before this Committee. The Governor's letter of appointment is also before the Committee.

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

A Utilities Commissioner is presently paid a salary of $107,136 annually (the same as a Superior Court Judge). There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years.

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

A Commissioner may not engage in any other employment, business, profession or vocation. G.S. 62-11(i) provides, in part: *"Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office."*

During the term of office a Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

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

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

upon the type of utility service and is affected in some cases by federal law. The Commission also has limited authority over electric cooperatives and their subsidiaries, and municipalities.

The resolution is effective upon ratification.

S1172e1-SMRL

NORTH CAROLINA UTILITIES COMMISSION

ROBERT V. OWENS, JR.

Commissioner Robert V. Owens, Jr. was born on December 21, 1932 in Manteo, North Carolina. He graduated from Manteo High School and attended East Carolina University before serving in the U.S. Coast Guard. Prior to joining the Commission, he was a Dare County business owner. He is married to Sarah and they have two children and four grandchildren. He is a member of the Manteo Baptist Church.

Owens has served more than 35 years in various leadership and civic capacities in the state. He was appointed to the University Health Systems of Eastern Carolina Board of Directors; Pitt County Memorial Hospital Board of Trustees; and the Outer Banks Hospital Board of Directors. Owens is past Director of the Governor's Eastern Office, a past Chairman and member of the Dare County Board of Commissioners, and a past member of the North Carolina Tax Study Commission; North Carolina State Banking Commission and the North Carolina State Parks and Recreation Commission.

In 1984, Governor James Hunt awarded Owens the Order of the Long Leaf Pine, the highest service award that can be given to a North Carolina citizen.

Owens is the recipient of three leadership awards for: Promotion of Education and Technology in Dare County Schools; Promotion of Dare County Babe Ruth World Series; and Promotion of North Carolina Mentally Handicapped. He has been honored with the Dare County Citizen of the Year Award and the Town of Manteo Citizen of the Year Award. He is past president of the Manteo Lion Club, member of the Manteo Masonic Lodge and Dare County Shrine Club, where he served as past president.

Commissioner Owens assumed office on the North Carolina Utilities Commission on August 29, 1997. His current term ends June 30, 2005. He also serves on the Water Committee of the National Association of Regulatory Utility Commissioners.

SUPPLEMENTAL
Statement of Economic Interest

Office Use Only
Bd Code _____
Appt by _____
Date filed:

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail: nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009J, Raleigh

Name of Person Filing: Robert V. Owens, Jr.
Name of Spouse: Sarah A. Owens
Home Address: Post Office Box 505
Manteo, NC 27954
Home Telephone: 252-473-2721
E-Mail Address: Owens@ncuc.net
Name of Employer: North Carolina Utilities Commission
Your Title: Commissioner
Business Address: 4325 Mail Service Center
Raleigh, NC 27699
Business Telephone: 919-733-4072
Business Fax: 919-715-5970
Business Activity: Utility Regulation

Spouse's Employer and Business Activity: Retired

(i) If you are filing because you are serving on or being considered for appointment to a State "board" (as defined in the attached cover sheet), please state the full legal **name of the Board:**

North Carolina Utilities Commission

(ii) By whom were you appointed or are you being considered for appointment (Governor, Speaker of the House, President Pro Tempore of the Senate): Governor

(iii) Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? Answering "yes" does *not* disqualify you from service. See the attached cover sheet. No ✓ Yes ___ If "yes," please explain:

NOTE: The Order requires you to *list* assets and liabilities with a value of $10,000 or more for yourself and spouse as set forth below. You are NOT required to include an estimated *value* of the assets and liabilities. For all questions, please indicate "None" or "Not Applicable" where appropriate.

1. (a) List all parcels of **real estate** located in North Carolina in which you, or your spouse, have an ownership interest valued at $10,000 or more. Give the street address and/or other specific description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

Home & Lot, 407 Ananias Dare Street, Manteo, NC 27954
Part Owner Acreage (Burnside) Roanoke Island, Manteo, NC

(b) Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. **Please indicate "None" or "Not Applicable" where appropriate.**

None

(c) If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain. **Please indicate "None" or "Not Applicable" if appropriate.**

N/A

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

N/A

3. List the *name* of each **publicly-owned company** in which the value of securities held by you or your spouse is $10,000 or more. This question is not asking for the value or worth of such securities – just the *name* of the company. You may attach a list from your broker. **Please indicate "None" or "Not Applicable" if appropriate.**

SCIOS (Med Research)
East Carolina Bank
Franklin Street Partners
State Employees Credit Union

4. (a) List the *name* and business activity of each **non-publicly-owned company or business entity** in which the value of securities or other equity interests held by you or your spouse is $10,000 or more, including, but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. **Please indicate "None" or "Not Applicable" if appropriate.**

N/A

(b) With respect to the entities listed above, should any of those entities own securities or equity interests of $10,000 or more in **other companies or business entities**, list the name of the company or business entity and give a brief description of the business activity of each. **Please indicate "None" or "Not Applicable" if appropriate.**

N/A

(c) Are any of the entities listed above licensed by, regulated by, or have any business relationships with the same area of State Government with which you are or will be associated? No ✓ Yes ___ If so, please explain.

5. You are required to make a good faith effort to identify and list any individual or business entity with which you or your spouse have a financial or professional relationship (including service on a board of directors or other leadership or policy-making body) provided a reasonable person would conclude that **either**

(1) The *nature of such relationship* presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, **or**

(2) Such individual or business entity's *other financial or professional interests* (separate and distinct from yours) would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties.

For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed. **Please indicate "None" or "Not Applicable" if appropriate.**

N/A

6. List all **directorships** on all boards on which you are serving. Please explain any situation that could conflict or appear to conflict with your official duties. **Please indicate "None" or "Not Applicable" if appropriate.**

Trustee, Pitt County Memorial Hospital (None)
Trustee, Roanoke Island Festival Park (none)
Commissioner, North Carolina Utilities Commission (none)

7. Are you an **elected official** at the local government level? ✓ No ___ Yes If so, please explain.

8. If you, your spouse, or your dependent children are the **beneficiary of a trust** created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of $10,000 or more. **Please indicate "None" or "Not Applicable" if appropriate.**

N/A

9. List each **asset** with a valuation of $10,000 or more, held by you or your spouse, **which has not been listed elsewhere.** Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects. **Please indicate "None" or "Not Applicable" if appropriate.**

N/A

10. List each **liability** with a valuation of $10,000 or more for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans. **Please indicate "None" or "Not Applicable" if appropriate.**

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

Sources for Person Filing:

Salary - State of North Carolina
Social Security
Sale of properties Burnside Forest

Sources for Spouse:

Social Security

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

N/A

12. Are you a **practicing attorney?** No ✓ Yes ___ If so, please check each category of legal representation in which you and/or the law firm with which you are associated has, during any single year of the past five years, earned legal fees of $10,000 or more from any of the following categories of legal representation:

( ) Admiralty ( ) Taxation ( ) Decedent's estates ( ) Corporation law ( ) Real property

( ) Negligence (representing plaintiffs) ( ) Negligence (representing defendants)

( ) Criminal law ( ) Labor law ( ) Insurance law ( ) Administrative law

( ) Utilities regulation or representation of regulated utilities ( ) Representation of local governments

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the *past five years* as an employee, officer, director, partner, or owner. For each business listed, state your association and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of business and whether you or the business is licensed by, regulated by, receive permits, grants, or other funding from the same area of State Government with which you are associated. **Please indicate "None" or "Not Applicable" if appropriate.**

N/A

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

n/a

(b) List all **gifts** received with a value exceeding **$100** during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

N/A

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy. **Please indicate "None" or "Not Applicable" if appropriate.**

N/A

16. Having read the Order in general and the "Rules of Conduct for Public Officials" in particular, provide **any other information** which a reasonable person would conclude is necessary or helpful either to carry out the purposes of the Order or to fully disclose any potential conflict of interest or appearance of conflict. Identify any conflicts or potential conflicts you may have that are not fully or adequately covered elsewhere in this form. Include an explanation of how you would propose to resolve any conflicts or potential conflicts.

N/A

VERIFICATION

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

May 9, 2005
Date

Robert V. Ramsey Jr.
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn to before me this the 9th day of May, 2005.

My Commission Expires: May 28, 2006

Debra C. Fearing
Signature of Notary Public

DEBRA C. FEARING
NOTARY PUBLIC
WAKE COUNTY, N.C.

My Commission Expires 5-28-2006

Rev. 12-1-04

NO-CHANGE FORM ("Short Form")

to

Statement of Economic Interest

Executive Order Number One

Office Use Only
Code _____
Appt by _____
Date filed: 4/12/04

NORTH CAROLINA BOARD OF ETHICS

For assistance call 919-733-2780 Fax 919-733-2785

e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest *each year* by **May 15**. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO **NOT** HAVE ANY CHANGES TO REPORT, please sign, date, and have this "No-Change" form notarized by a notary public. Upon completion, please return this signed, dated, and notarized page ONLY to the above address. If you do not have any material changes to report, this is the only form you need to submit.

IF YOU **DO** HAVE CHANGES TO REPORT, please make all necessary changes on a supplemental Statement of Economic Interest form. Other than your name and the name of your Board or Agency, YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT.

Please sign, date, and have whichever form you use notarized before returning it to the Board of Ethics at the above address. AGAIN, ALL FORMS MUST BE NOTARIZED.

Name of Person Filing: ROBERT V. OWENS JR.

Name of Board on which you are serving: NORTH CAROLINA UTILITIES COMMISSION

or

Name of State Agency in which you are employed: STATE OF NORTH CAROLINA

VERIFICATION OF *NO MATERIAL CHANGES*

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been **no material changes** to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

1/12/04
Date

Robert V. Owens Jr.
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this the 14th day of January, 2004

My Commission Expires: 5-28-2006.

My Commission Expires 5-28-2006

Debra C. Teague
Notary Public

NO-CHANGE FORM ("Short Form")

to

Statement of Economic Interest

Executive Order Number One

Office Use Only
Code _____
Appt by _____
Date filed: 3/26/03

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

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Please sign, date, and have whichever form you use notarized before returning it to the Board of Ethics at the above address. AGAIN, ALL FORMS MUST BE NOTARIZED.

Name of Person Filing: Robert V. Owens, Jr.

Name of Board on which you are serving: NC Utilities Commission

or

Name of State Agency in which you are employed: Commerce

VERIFICATION OF *NO MATERIAL CHANGES*

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been **no material changes** to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

1/16/03
Date

Robert V. Owens Jr.
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this the 16th day of January, 2003.

My Commission Expires: May 28, 2006.

My Commission Expires 5-28-2006

Debra C. Fearing
Notary Public

DEBRA C. FEARING NOTARY PUBLIC WAKE COUNTY, N.C.

217
Gov.

3-22-02

Supplemental
Statement of Economic Interest
Executive Order Number One

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest each year **between April 15 and May 15.** See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO **NOT** HAVE ANY CHANGES TO REPORT, please sign, date, and have this page notarized by a notary public. Upon completion, please return this signed, dated, and notarized page ONLY to the above address.

IF YOU **DO** HAVE CHANGES TO REPORT, please make all necessary changes on the enclosed Statement of Economic Interest form. YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT. Please sign, date, and have the form notarized before returning it to the Board of Ethics at the above address.

Name of Person Filing: Robert V. Owens, Jr.

Name of Board on which you are serving: _____

or

Name of State Agency in which you are employed: North Carolina Utilities Commission

VERIFICATION OF NO MATERIAL CHANGES

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been no material changes to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

March 18, 2002
Date

Robert V. Owens, Jr.
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this the 18th day of March, 2002.

My Commission Expires: May 28, 2006.

Debra C. Fearing
Notary Public

DEBRA C. FEARING NOTARY PUBLIC WAKE COUNTY, N.C.

My Commission Expires 5-28-2006

NORTH CAROLINA BOARD OF ETHICS
1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324

GEORGE F. BASON
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

July 18, 2001

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Robert V. Owens, Jr., Utilities Commission

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

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

Section 7 of the Order mandates that public officials perform their duties in a manner to promote the best interests of the public. Because conflicts of interest may arise while performing their public duties, public officials should make a due and diligent effort to determine whether they have a conflict of interest before taking any action that could have an impact on their own financial, familial, or personal interests.

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

Sincerely,

George F. Bason/mb

George F. Bason
Chairman

cc: Mr. Robert V. Owens, Jr.
Chairman of the Commission

217
Gov
5-21-01

Statement of Economic Interest

for Executive Order Number One
Governor Michael F. Easley

NORTH CAROLINA BOARD OF ETHICS
1324 Mail Service Center
Raleigh, NC 27699-1324
(919) 733-2780 FAX (919) 733-2785

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

For assistance call Millie Donavant or Christine Miller at (919) 733-2780
e-mail: millie.donavant@ncmail.net **or** christine.a.miller@ncmail.net

Name of Person Filing: Robert V. Owens, Jr.

Name of Spouse: Sarah A. Owens

Home Address: P. O. Box 505
Manteo, NC 27954

Home Telephone: (252) 473-2721

Name of Employer: Utilities Comm

Your Title: Commissioner

Business Address: 4325 Mail Service Center
Raleigh, NC 27699-4325

Business Telephone: (919) 733-4072

Business Fax: (919) 715-5970

Business Activity: Utility regulation

Spouse's Employer and Business Activity: Retired

If you are filing because you are serving on or being considered for appointment to a State Board (as defined above), state the **name of the Board.**

N/A

Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? No X If yes, please explain:

N/A

NOTE: Executive Order Number One requires you to list assets and liabilities with a value of $10,000 or more for yourself and spouse, as set forth below. You are not required to include an estimated value of the assets and liabilities.

1. List all parcels of **real estate** located in North Carolina in which you, or your spouse, have an ownership interest valued $10,000 or more. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

Home & Lot, 407 Ananias Dare St., Manteo, NC 27954
Part Owner Acreage (Burnside), Roanoke Island, Manteo, NC

Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest.

None

If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

N/A

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

N/A

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

SCIOS (Med Research)

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

Cluck, Inc. (KFC), Nags Head, NC 27959

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

N/A

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

N/A

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

(1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for y while performing your official duties, **or**

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

N/A

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

Trustee, Pitt County Memorial Hospital (None)
Director, Chicamacomico Life Saving Station (None)
Trustee, Roanoke Island Festival Park

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

No

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

N/A

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

N/A

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

N/A

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

Sources for Person Filing:

Salary - State of NC
Social Security
Buy out of Owens' Restaurant

Sources for Spouse:

Social Security

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

N/A

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

( ) Admiralty ( ) Taxation ( ) Decedent's estates ( ) Corporation law ( ) Real property

( ) Negligence (representing plaintiffs) ( ) Negligence (representing defendants)

( ) Criminal law ( ) Labor law ( ) Insurance law ( ) Administrative law

( ) Utilities regulation or representation of regulated utilities ( ) Representation of local governments

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

N/A

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

N/A

List all **gifts** received with a value exceeding **$100** during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

N/A

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy.

N/A

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

N/A

VERIFICATION

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

5/15/2001
Date

Robert V. Rumf
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn to before me this the 15th day of May, 2001.

My Commission Expires:

May 28, 2001.
My Commission Expires 5-28-2001

Debra C. Fearing
Notary Public

DEBRA C. FEARING NOTARY PUBLIC WAKE COUNTY, N.C.

Hand-delivered
5-9-05

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

JO ANNE SANFORD
CHAIR

May 9, 2005

Senator R. C. Soles, Jr.
Chairman
Senate Commerce Committee
Room 2022 - Legislative Building
Raleigh, North Carolina

HAND DELIVERY

Dear Senator Soles:

I write on the eve of Commissioner Bobby Owens' confirmation hearing before the Senate Commerce Committee for three reasons. First, I apologize in advance for not being there, but I am taking Bobby's place on a panel which will hear a contested water utility case in Manteo on Tuesday. Though it is a terrible task to have to be on the Outer Banks during a beautiful week in May, someone had to step up to the plate and so I did.

I do regret not being here in Raleigh tomorrow because I would have appreciated greatly the opportunity to speak to the enormous value that Bobby brings to our table at the Commission. He is a pragmatist with a heart of gold and a passion both for the people and for the State of North Carolina. His business background combines with his keen understanding of the proper role of government and his experience in both arenas is of the highest order. Though he knows and cherishes the interests of his beloved Outer Banks, he has always demonstrated absolute clarity about the responsibility to regulate equally on behalf of the interests of consumers and providers throughout the state---literally from Manteo to Murphy. Please know that the Commission has benefited tremendously from Bobby's dedication to our mission and that he contributes greatly to our ability to fulfill our legislative mandate. It is a difficult and complex task---this regulation business----as we impact the provision of our corporate and residential citizens' access to water, communications services, transportation and energy supply. Tough decisions must be made as we seek the balance among competing considerations: companies with capitalizations ranging from the modest to the multi-billions of dollars must have an opportunity to make a fair profit if they provide good service. Customers require adequate and reliable

service at just and reasonable rates. The State of North Carolina cannot succeed economically or in any of its governmental missions unless this balance is struck correctly, and Commissioner Owens' talent for discerning the proper measure for the mix (the cook's talent for proportions!) is well-suited for our task.

Finally, I want to thank you for your unfailing courtesy to me and to our Commission when we have the privilege of dealing with you and appearing before your Committee. Please always feel free to let me know if I may be of assistance to you.

Very truly yours,

Jo Anne

Jo Anne Sanford, Chair

Hand-delivered
5-9-05

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

J. RICHARD CONDER
COMMISSIONER

May 9, 2005

Senator R. C. Soles, Jr.
Chairman
Senate Commerce Committee
Room 2022 - Legislative Building
Raleigh, North Carolina

HAND DELIVERY

Dear Mr. Chairman:

For what it's worth, I would like to strongly encourage your committee to confirm Bobby Owens for the North Carolina Utilities Commission. Bobby does an excellent job and brings with him a boatload of common sense and a wealth of experience. His service to this State is and has been exemplary.

Thank you for your consideration and please give your committee my best regards.

Sincerely,

J. Richard Conder

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE JOINT RESOLUTION 1172
PROPOSED COMMITTEE SUBSTITUTE S1172-CSRL-22 [v.1]

5/9/2005 9:31:43 PM

Sponsors:

Referred to:

May 2, 2005

A JOINT RESOLUTION FOR THE CONFIRMATION OF THE REAPPOINTMENT OF ROBERT V. OWENS, JR. TO THE UTILITIES COMMISSION.

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

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2005, by expiration of term; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Robert V. Owens, Jr. to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2005, and expire June 30, 2013; Now, therefore,

Be it resolved by the Senate, the House of Representative, concurring:

SECTION 1. The appointment of Robert V. Owens, Jr. to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE JOINT RESOLUTION 1172
PROPOSED COMMITTEE SUBSTITUTE S1172-PCS55228-RL-22

Sponsors:

Referred to:

May 2, 2005

A JOINT RESOLUTION FOR THE CONFIRMATION OF THE REAPPOINTMENT OF ROBERT V. OWENS, JR. TO THE UTILITIES COMMISSION.

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

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2005, by expiration of term; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Robert V. Owens, Jr. to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2005, and expire June 30, 2013; Now, therefore,

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

SECTION 1. The appointment of Robert V. Owens, Jr. to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 522

Short Title:	Extend Building Code Pilot Program.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Commerce.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE BUILDING CODE PILOT PROGRAM FOR REHABILITATING EXISTING BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2001-372 reads as rewritten:

"**SECTION 4.** For each lead local jurisdiction, the period of the pilot program established by this act shall commence upon adoption of the pilot code by the governing body of the lead local jurisdiction. For all other participating jurisdictions, the pilot program shall commence on the date the eligible local jurisdiction communicates to the Department and the lead local jurisdiction that its governing body has adopted the pilot code. The pilot program shall expire for each lead local jurisdiction and all participating jurisdictions on ~~January 1, 2006.~~ January 1, 2007."

SECTION 2. Section 6 of S.L. 2001-372 reads as rewritten:

"**SECTION 6.** The lead local jurisdiction shall submit to the Building Code Council, the Department, and to the General Assembly both an interim report on the effectiveness of the pilot program on or before December 1, 2004, and a final report on or before ~~April 1, 2006.~~ April 1, 2007. The final report shall include:

(1) A survey and statistics on the utilization of the pilot code in participating jurisdictions;

(2) An analysis of administrative and cost issues associated with implementing the pilot code in participating jurisdictions;

(3) Recommendations as to whether the pilot program should be extended or made permanent; and

(4) Any legislative recommendations, including whether the pilot code standards authorized by this act should be incorporated in the General Statutes as part of the statewide building code."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 522:
Extend Building Code Pilot Program

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 9, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 522 amends S.L. 2001-372 to extend the building code pilot program for rehabilitation of existing buildings from January 1, 2006 to January 1, 2007. The deadline for lead local jurisdictions to submit a final report to the Building Code Council, the Department of Insurance, and the General Assembly on the program is also extended to April 1, 2007.***

A lead local jurisdiction is an eligible jurisdiction with a population of 650,000 or more that intends to adopt the code.

The rehabilitation code developed by the pilot program is optional and intended as an alternative to the existing building code.

BACKGROUND: S.L. 2001-372 established a pilot program that utilizes building code standards based on the New Jersey Building Code Rehabilitation Subcode in conjunction with the statewide building code, to promote rehabilitation of existing buildings in participating jurisdictions.

The program includes the following:

1. Development of a pilot rehabilitation building code ("pilot code") by a "lead local jurisdiction" in consultation with the Department of Insurance.
2. Implementation by participating jurisdictions adopting the pilot code.
3. Study and reporting on the cost and effectiveness of the pilot program, including recommendations for continuation or expansion of the program statewide.

S0522e1-SMRG

SESSION LAW 2001-372
SENATE BILL 633

AN ACT TO ESTABLISH A BUILDING CODE PILOT PROGRAM FOR REHABILITATING EXISTING BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. There is established a pilot program to utilize building code standards to promote rehabilitation of existing buildings in participating jurisdictions. As part of the pilot program, the lead local jurisdiction, as described in Section 3 of this act, shall develop a pilot rehabilitation building code ("pilot code") based on the New Jersey Uniform Construction Code Rehabilitation Subcode ("New Jersey model code"), codified at Title 5, Chapter 23, Subchapter 6 of the New Jersey Administrative Code, (cited as N.J.A.C. 5: 23-6). The lead local jurisdiction shall develop the pilot code in consultation with the North Carolina Department of Insurance ("Department") and in accordance with procedures established in this act. Within 180 days of the effective date of this act, the lead local jurisdiction shall cross-reference the pilot code to the North Carolina State Building Code (NCSBC), Volumes I, II, III, IV, V, VI, VII, IX, and I-C and deliver the cross-referenced pilot code to the Department for comment. Within 30 days thereafter, the Department shall submit its comments, if any, on the pilot code to the lead local jurisdiction. The comments, if any, shall address insuring proper coordination and cross-referencing of the pilot code to the existing NCSBC chapters but shall not include substantive changes to the standards established by the New Jersey model code. Within 30 days after receipt of comments by the Department or, if no comments are received, upon expiration of the comment period, the lead local jurisdiction shall incorporate any comments as may have been received, and the resulting document shall then become the pilot code for purposes of this act.

SECTION 2. Any eligible local jurisdiction, as defined in Section 3 of this act, may elect to participate in the pilot program by adopting the pilot code and by communicating to the Department and the lead local jurisdiction that its governing body has adopted the pilot code in accordance with this act. Any participating jurisdiction, as defined in Section 3 of this act, shall use the pilot code established by the lead local jurisdiction as set forth in Section 1 of this act. Notwithstanding any other provision of law, during the period of the pilot program established by this act, the pilot code shall be enforced in any participating jurisdiction as if it were statutorily mandated and approved by the North Carolina Building Code Council ("Building Code Council"). The lead local jurisdiction and other participating jurisdictions, and their officers, directors, and employees enforcing the pilot code shall not be subject to liability for damages to any greater or lesser extent arising from participation in the pilot program than if the lead local jurisdiction and other participating jurisdictions were not participating in the pilot program. In addition, buildings or projects built in compliance with the pilot code shall not be required to be retrofitted to come into compliance with the NCSBC once the pilot program expires.

SECTION 3. For purposes of this act, "eligible local jurisdictions" means cities and counties whose local building inspection departments have been approved by the Building Code Council to do local plan review approval in accordance with Section 602.2.3 of the Administrative Volume of the North Carolina State Building Code, and "participating jurisdictions" means eligible local jurisdictions electing to adopt the pilot code in accordance with this act. Any eligible local jurisdictions having a population of more than 650,000 persons according to the most recent decennial census may qualify as a "lead local jurisdiction" for purposes of this act. If more than one eligible local jurisdiction shall qualify as a lead local jurisdiction, then the responsibilities of the lead local jurisdiction under this act shall be borne jointly by such eligible local jurisdictions.

Within 30 days of the effective date of this act, any eligible local jurisdiction that qualifies and intends to act as a lead local jurisdiction shall notify the Department of its intention. Upon the expiration of such time, those eligible local jurisdictions providing notice shall constitute the lead local jurisdictions for all further purposes under this act.

SECTION 4. For each lead local jurisdiction, the period of the pilot program established by this act shall commence upon adoption of the pilot code by the governing body of the lead local jurisdiction. For all other participating jurisdictions, the pilot program shall commence on the date the eligible local jurisdiction communicates to the Department and the lead local jurisdiction that its governing body has adopted the pilot code. The pilot program shall expire for each lead local jurisdiction and all participating jurisdictions on January 1, 2006.

SECTION 5. The lead local jurisdiction shall bear all costs and expenses incurred in developing the pilot code, other than expenses incurred directly by the Department in providing comments and review. Each participating jurisdiction shall bear all expenses associated with administering the pilot code in its jurisdiction. The lead local jurisdiction shall bear all expenses associated with the reporting requirements set forth in Section 6, except that each participating jurisdiction shall bear the expenses associated with assembling and compiling utilization statistics for that jurisdiction. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act. The Department shall carry out its responsibilities under this act with funds available to the Department.

SECTION 6. The lead local jurisdiction shall submit to the Building Code Council, the Department, and to the General Assembly both an interim report on the effectiveness of the pilot program on or before December 1, 2004, and a final report on or before April 1, 2006. The final report shall include:

(1) A survey and statistics on the utilization of the pilot code in participating jurisdictions;

(2) An analysis of administrative and cost issues associated with implementing the pilot code in participating jurisdictions;

(3) Recommendations as to whether the pilot program should be extended or made permanent; and

(4) Any legislative recommendations, including whether the pilot code standards authorized by this act should be incorporated in the General Statutes as part of the statewide building code.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 974

Short Title:	Alcohol Sales-Campus Performing Arts Centers.	(Public)
Sponsors:	Senator Dannelly.	
Referred to:	Commerce.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SALE OF BEER AND WINE AT CERTAIN UNIVERSITY FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. ~~Provided, however, this~~ This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 seats."

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

SENATE BILL 974:
Alcohol Sales-Campus Performing Arts Centers

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 10, 2005
Introduced by:	Sen. Dannelly	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: Senate Bill 974 would permit the sale of beer and wine at performing arts centers with seating not to exceed 2000 located on property owned or leased by institutions of The University of North Carolina.

CURRENT LAW: Under current law, the sale of beer and wine on is prohibited on the campus or property of a public school or college except for regional entertainment facilities located on school property for non-school functions, unless the business selling beer or wine is a hotel or nonprofit alumni association with a mixed beverages permit or a special occasion permit.

BILL ANALYSIS: The bill would make an exception to the prohibition on the sale of beer and wine on UNC campuses but permitting sales at performing arts centers located on property owned or leased by institutions of the University where the seating capacity does not exceed 2000 seats.

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

S0974e1-SMRU

CHRISTIAN ACTION LEAGUE OF NORTH CAROLINA, INC.

809 SPRING FOREST ROAD, STE. 1000, RALEIGH, NC 27609
Office Phone: (919) 787-0606 • Fax: (919) 786-1509 • E Mail: Calact@aol.com

May 10, 2005

Dear Senator,

It is my understanding that **Senate Bill 974 – Alcohol Sales – Campus Performing Arts Centers** is scheduled to be taken up by the Senate Commerce Committee today. The legislation would essentially allow for beer and wine sales at performing arts centers at institutions of the University of North Carolina, if the seating capacity doesn't exceed 2,000 seats.

It has been difficult for me to assess the impact of this legislation. However, one principle in this matter seems clear to me. In a day when alcohol-related problems are the most serious difficulties faced by college and university administrators, it just doesn't make sense to create another alcohol outlet on any college campus.

Consider the following college student drinking facts:

- 73 percent of fraternity and 57 percent of sorority members are binge drinkers.
- 58 percent of male athletes and 47 percent of female athletes are binge drinkers.
- Frequent binge drinkers constitute less than one quarter of all students (23 percent) but consume three quarters (72 percent) of all the alcohol college students drink.
- Numerous alcohol outlets (bars and liquor stores) typically surround most colleges.
- 1400 college students aged eighteen to twenty-four are killed every year as a result of some alcohol-related incident.

(*Dying to Drink,* Henry Wechsler, Ph.D. Director, Harvard School of Public Health College Alcohol Study)

Moreover, I seriously doubt the parents of students in the University of North Carolina system would approve of this legislation. According to the National Coalition Against Drunk Driving, "Parents, who often foot the bill to send their children to college, are also becoming increasingly alarmed at the rates of drinking on college campuses. A recently released survey conducted by the American Medical Association (AMA), found 95 percent of the parents surveyed viewed underage drinking as a serious threat to their children and 85 percent said easy access to alcohol in college communities contributes to the problem." Are we to believe parents would approve of an additional alcohol outlet on campus?

Eliminating alcohol outlets, not adding them on college campuses is a proven successful strategy for protecting students. The nation's preeminent study of college drinking by the Harvard School of Public Health reveals that 21 percent fewer students at colleges that ban alcohol are heavy episodic drinkers. "Students at ban colleges are more likely to abstain from alcohol completely. Three in ten students (29 percent) at ban schools abstain compared to only one in six students (16 percent) at non-ban colleges."

Let's not authorize the sale of beer and wine at performing arts centers located on property owned by the University of North Carolina. It's hard to see where this legislation could possibly be of any real value to students.

I hope you will do the right thing and vote against this legislation in the Commerce Committee.

God Bless,

Rev. Mark H. Creech
Executive Director

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 10, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Henry Patterson	Patterson Harkavy LLP 100 Europa Drive, Suite 250 Chapel Hill, NC
Mitch Williams	Progress Energy 411 S. Wilmington St Raleigh
Debra Derr	BellSouth
David Crawford	AIA North Carolina
Sim J. Ervin, IV	NIUC
Patti Jensen	Mitchell County Chamber of Commerce
DAVID DUNN	UNC CHARLOTTE (GO NINERS!)
T Jay Smith	NCRA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 10, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Van Dyke	BST
Tim Bradley	NC DOT
Wanda Edwards	NC DOI
Jim Tsanupp	AIANC
Sharon Miller	UCA
Don Hathcock	BellSouth
Linda Cheatham	BellSouth
Kathy Hawkins	Progress Energy
Mark Fleming	University System
Suzanne Buckley	Gov Office
[illegible]	Ind Telco Assoc

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

May 10, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Edwards	UNC-CH Legis Rep

Senate Commerce Committee
Thursday, May 12, 2005, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 590	Consumer Credit Counseling/Debt Management.	Senator Dorsett
SB 621	Reduce Holding Period for Unclaimed Property.-AB	Senator Dorsett
SB 739	Health Insurance Market/Small Businesses.	Senator Rand

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, May 12, 2005 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 10:00 AM on May 12, 2005, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Ben Carr from Raleigh, sponsored by Senator Richard Stevens; Derik Dean from Garner, also sponsored by Senator Stevens; Jessica Davison from Raleigh, sponsored by Senator Neal Hunt; and Cory McInnis from Laurinburg, sponsored by Senator William Purcell.

Senator Soles then recognized Senator Katie Dorsett to explain Senate Bill 590, Consumer Credit Counseling/Debt Management. Senator Phil Berger moved the adoption of a committee substitute for the purpose of discussion. The motion carried. Senator Dorsett introduced Walker Reagan, Committee Counsel, who explained existing law and the committee substitute. Senator Dorsett then introduced four people to speak in favor of the bill:

- Mr. Dewey Matherly, representing the Consumer Credit Services of North Carolina
- Mr. Joel Greenberg, Trustee of the Association of Independent Consumer Credit Counseling Agencies and President of Novadebt, a consumer counseling agency based in New Jersey with an office in Raleigh, North Carolina
- Mr. Phil Lehman, Consumer Protection Office, North Carolina Department of Justice
- Mr. Joseph Smith, Commissioner of Banks

Senator Stevens moved the adoption of an amendment to extend the provisions of the bill to for-profit credit counseling services. Senator Dorsett spoke against the amendment. Ms. Susan Dotson-Smith, Director of Development and Marketing, Consumer Credit Counseling, Asheville, North Carolina, also spoke against the amendment. Other senators spoke in favor of the amendment. The motion carried. Senator Tony Rand moved unfavorable report of the bill, but favorable as to the adopted committee substitute as amended and rolled into a new committee substitute. The motion carried.

Senator Soles announced that the companion bill to SB 621, Reduce Holding Period for Unclaimed Property.-AB, HB 672, had been passed by the House and has been referred to the Senate Commerce Committee. The House Bill will be taken up at a later meeting.

Senator Rand requested that SB 739, Health Insurance Market/Small Businesses, be removed from the committee's agenda.

The meeting adjourned at 11:45 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 18, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **590** Consumer Credit Counseling/Debt Management.

Draft Number:	PCS 55230
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 590

Short Title:	Consumer Credit Counseling/Debt Management.	(Public)
Sponsors:	Senators Dorsett; Albertson, Cowell, Dannelly, Forrester, Holloman, Jenkins, Lucas, Malone, Purcell, Rand, Stevens, and Thomas.	
Referred to:	Commerce.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

"**§ 14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.**

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

(1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.

(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney at law licensed to practice in this State who is not primarily engaged in the business of debt adjusting but who engages in debt adjusting activities incidental to the practice of law.

(7) An organization that is a tax-exempt nonprofit organization pursuant to section 501(c)(3) of the Internal Revenue Code and provides credit counseling and debt management services to debtors if the organization also does all of the following:

a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.

b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing. For purposes of this sub-subdivision, 'nominal consideration' means a fee or a contribution to cover the cost of administering the plan, such fee or contribution not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the plan, not to exceed forty dollars ($40.00) per month.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. Does not purchase any goods, services, or facilities for debt management services from any for-profit entity that is affiliated with the nonprofit organization or its officers or employees by common ownership or control.

g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"**§ 14-423. Definitions.**

As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt~~"Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt~~"Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or ~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the creditor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an individual, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(4) ~~The word "person~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-424 reads as rewritten:

"**§ 14-424. Engaging, etc., in business of debt adjusting a ~~misdemeanor.~~Class I felony.**

If any person ~~shall engage in, or offer to or attempt to,~~engages in, or offers to or attempts to, engage in the business or practice of debt adjusting, or if any person ~~shall hereafter act, offer to act, or attempt~~acts, offers to act, or attempts to act as a debt adjuster, ~~he shall be~~the person is guilty of a ~~Class 2 misdemeanor.~~Class I felony."

SECTION 4. G.S. 14-425 reads as rewritten:

"**§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.**

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 5. G.S. 53-93 reads as rewritten:

"**§ 53-93. Powers and duties of Commissioner.**

(a) The Commissioner of Banks shall have the powers, ~~duties~~ duties, and functions herein given, and in addition ~~thereto~~ such other powers and rights as ~~may be~~ are necessary or incident to the proper discharge of the Commissioner's duties. The Commissioner may appoint and assign a member of the staff of the Office of the Commissioner of Banks to preside at administrative hearings required by Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, and make a recommended decision to the Commissioner.

(b) The Commissioner of Banks shall determine which accrediting organizations are independent and are nationally recognized for providing accreditation to an organization that is a tax-exempt nonprofit organization pursuant to section 501(c)(3) of the Internal Revenue Code, provides credit counseling and debt management services to debtors, and otherwise complies with G.S. 14-426(7). The Commissioner of Banks may adopt any rules necessary for implementing this subsection."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 590
PROPOSED COMMITTEE SUBSTITUTE S590-CSRU-30 [v.1]

5/11/2005 8:36:22 PM

Short Title: Consumer Credit Counseling/Debt Management. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

"**§ 14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.**

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

(1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.

(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney-at-law licensed to practice in this State who is not primarily engaged in the business of debt adjusting but who engages in debt adjusting activities incidental to the practice of law.

(7) An organization that is a tax-exempt nonprofit organization pursuant to section 501(c)(3) of the Internal Revenue Code and provides credit counseling, education, and debt management services to debtors if the organization also does all of the following:

a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.

b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. Does not purchase any goods, services, or facilities for debt management services from any entity that is affiliated with the nonprofit organization, or its officers or employees by common ownership or control, unless such purchase was approved by the members of the Board of Directors of the nonprofit organization who have no conflict of interest and the purchase is at a price no greater than a comparable organization would pay in similar circumstances.

g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"**§ 14-423. Definitions.**

(a) As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt"~~Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt"~~Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or ~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the creditor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an ~~individual,~~individual who resides in North Carolina, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(3a) "Nominal consideration" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars ($40.00) per month.

(4) ~~The word "person"~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-425 reads as rewritten:

"**§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.**

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting

business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 4. G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes effective October 1, 2005. The remainder of this act is effective when it becomes law.

SENATE BILL 590:
Consumer Credit Counseling/Debt Management

BILL ANALYSIS

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	May 12, 2005
Introduced by:	Sen. Dorsett	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition S590-CSRU-30		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 590 would amend the criminal law that prohibits persons from engaging in the business or practice of debt adjusting by providing for an exemption from the limitations of the law for attorneys not primarily engaged in debt adjustment activities and non-profit credit counseling and debt management services. The bill also expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance. The bill adds as an additional remedy for violation of this law to allow the court to order the violator to pay a civil fine of up to $5000 plus attorneys fees.***

CURRENT LAW: Under current law it is a Class 2 misdemeanor to engage in the business or practice of debt adjusting (as defined in Section 2 of the bill). This law does not apply to the business or practice of debt adjustment by an employee of the debtor, a person acting pursuant to court order, a creditor of the debtor acting without cost to the debtor, a lender disbursing loan proceeds to pay debts, and a person who intermittently or casually adjust debts but is not regularly engaged in debt adjusting (See list of exempt persons in Section 1 of the bill). Currently the district attorney, acting on behalf of the State, may seek an injunctive to stop illegal debt adjustment activities.

BILL ANALYSIS:

Section 1 of the bill amends the list of person exempt from the law by adding:

- Licensed attorneys not primarily engaged in the business of debt adjustment but who act incident to the practice of law.
- Non-profit organizations that provide credit counseling, education, and debt management services under the following conditions:
  - Provides free credit counseling and budgeting assistance to a debtor prior to enrollment in a debt management plan.
  - Determines that the debtor has the financial ability to complete a debt management plan suitable to the debtor.
  - Disburses debtor's funds to creditors pursuant to a debt management plan for which the debtor only pays nominal consideration not to exceed $40 to initiate a plan and a monthly fee of 10% of the monthly payments not to exceed $40.
  - Provides at least a quarterly accounting to the debtor of disbursements made.
  - Does not require the debtor to purchase other services or materials as a condition of participation.

- Does not purchase goods, services or facilities for debt management services from a affiliate of the organization or its officers or employees, except when approved by the Board of Directors of the organization at no more than market price.
- Is accredited by an organization approved by the Commissioner of Banks.

Section 2 expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance by acting as an intermediary between the debtor and the debtor's creditors for the purposes of reducing, settling or altering terms of payment of debts regardless of whether the person is compensated or actually distributes debtor's funds to creditors.

Section 3 provides that the Attorney General, in addition to district attorneys, can bring actions to enjoin illegal debt adjusting as an unfair or deceptive trade practice. This section also allows the court to order the defendant to pay a civil penalty of up to $5000 and attorneys fees under G.S. 75-15.2 and 75-16.1.

EFFECTIVE DATE: G.S. 14-426(7), as enacted in Section 1 of the bill, becomes effective October 1, 2005, but the remainder of the bill is effective when the bill becomes law.

§ 14-424. Engaging, etc., in business of debt adjusting a misdemeanor.

If any person shall engage in, or offer to or attempt to, engage in the business or practice of debt adjusting, or if any person shall hereafter act, offer to act, or attempt to act as a debt adjuster, he shall be guilty of a Class 2 misdemeanor.

§ 75-15.2. Civil penalty.

In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars ($5,000) for each violation. In any action brought by the Attorney General pursuant to this Chapter in which it is shown that an action or practice when committed was specifically prohibited by a court order, the Court may, in its discretion, impose a civil penalty of up to five thousand dollars ($5,000) for each violation. Civil penalties may be imposed in a new action or by motion in an earlier action, whether or not such earlier action has been concluded. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

§ 75-16.1. Attorney fee.

In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 590

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S590-ARU-22 [v.1]

Date May 12 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S590-CSRU-30

Senator Stevens

moves to amend the bill on page 2, lines 4 and 5, by rewriting the lines to read:

"(7) An organization that provides credit".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 590
PROPOSED COMMITTEE SUBSTITUTE S590-PCS55230-RU-30

Short Title: Consumer Credit Counseling/Debt Management. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

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(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney-at-law licensed to practice in this State who is not primarily engaged in the business of debt adjusting but who engages in debt adjusting activities incidental to the practice of law.

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b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. Does not purchase any goods, services, or facilities for debt management services from any entity that is affiliated with the nonprofit organization, or its officers or employees by common ownership or control, unless such purchase was approved by the members of the Board of Directors of the nonprofit organization who have no conflict of interest and the purchase is at a price no greater than a comparable organization would pay in similar circumstances.

g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"**§ 14-423. Definitions.**

(a) As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt"~~Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt~~"Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or ~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the creditor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an ~~individual,~~individual who resides in North Carolina, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(3a) "Nominal consideration" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars ($40.00) per month.

(4) ~~The word "person~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-425 reads as rewritten:

"**§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.**

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting

business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 4. G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes effective October 1, 2005. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 621*

Short Title:	Reduce Holding Period for Unclaimed Property.-AB	(Public)
Sponsors:	Senator Dorsett.	
Referred to:	Commerce.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE HOLDING PERIOD FOR CERTAIN UNCLAIMED PROPERTY HELD AS STOCK OR OTHER EQUITY INTERESTS IN A BUSINESS ASSOCIATION, INCLUDING CASH DISTRIBUTIONS OF A DEMUTUALIZED INSURANCE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-53(c) reads as rewritten:

"(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after ~~issuance;~~ issuance.

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the ~~property;~~ property.

(3) Money order, cashier's check, teller's check, and certified check, seven years after ~~issuance;~~ issuance.

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, ~~five~~ three years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date a second consecutive mailing, notification, or communication from the holder to the apparent owner is returned to the holder as unclaimed by or undeliverable to the apparent ~~owner;~~ owner.

For purposes of distributions of a demutualized insurance company under this subdivision, the date of demutualization or reorganization shall be the date of the order of demutualization or reorganization that is rendered by the Department of Insurance and from which no further appeal can be taken or for which the time for noting an appeal has

expired. Property, subject to the requirements of this subdivision, shall include only the property described in the order of demutualization or reorganization that is rendered by the Department of Insurance and from which no further appeal can be taken or for which the time for noting an appeal has expired.

(5) Debt of a business association, ~~other than a~~ including debt evidenced by a matured or called bearer bond or an original issue discount bond, ~~five~~ three years after the date of an interest or principal payment unclaimed by the apparent ~~owner;~~ owner.

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the ~~property;~~ property.

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation ~~accrued;~~ accrued.

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift ~~card;~~ card.

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is ~~based;~~ based.

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes ~~distributable;~~ distributable.

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution ~~date;~~ date.

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes ~~distributable;~~ distributable.

(13) Wages or other compensation for personal services, two years after the compensation becomes ~~payable;~~ payable.

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes ~~payable;~~ payable.

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified

in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax ~~penalty; and~~ penalty.

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs."

SECTION 2. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 739*

Short Title:	Health Insurance Market/Small Businesses.	(Public)
Sponsors:	Senators Rand; and Bingham.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO OPEN UP THE HEALTH INSURANCE MARKET FOR SMALL EMPLOYERS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-110(1a) and (1b) are repealed.

SECTION 2. G.S. 58-50-115 is amended by adding a new subsection to read:

"(c) The provisions of this Part do not apply to a trade association group health plan meeting the following conditions:

(1) The sponsoring trade association obtains a license as a trade association group health plan by providing the Commissioner the required information on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. The applicant shall furnish to the Commissioner satisfactory proof of the proposed group's eligibility to meet the requirements of subdivision (2) of this subsection. No application is complete until the Commissioner has received all required information.

(2) Any trade association group health plan shall be comprised of two or more employers who are members of and are sponsored by a single bona fide trade or professional association. The association shall meet all of the following conditions:

a. Be comprised of members engaged in the same or substantially similar business or profession within the State.

b. Be incorporated in the State.

c. Have been in existence for at least 25 years before the date of application to the Commissioner to form a group.

d. Have been determined by the Internal Revenue Service to be exempt from taxation under 26 U.S.C. § 501(c).

e. Maintain on deposit with an FDIC insured institution reserves of at least one million dollars ($1,000,000).

(3) Two or more trade associations meeting the requirements of this subsection may jointly sponsor a trade association group health plan.

(4) Unless specifically exempted by law, a trade association group health plan shall be subject to the jurisdiction and laws of this State pursuant to Article 49 of this Chapter."

SECTION 3. G.S. 58-50-130(b) and (f) are repealed.

SECTION 4. This act becomes effective October 1, 2005.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Betty Tucker	Bank of America
Wayne Goodwin	DOI
[illegible]	JD, M, PA
[illegible]	JUPCI
[illegible]	[illegible]
Kathleen Edwards	UNC-CH Legis Reporting Service
Andy Ellen	NCRMA
Rita Martin	NC Home Builders Assoc.
Bob Spaeth	NCFA
Stacey Phipps	DST
Barbara Morales Burke	NCDOT

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Courtney Crowder	NCDOI
Kari Barsness	OSBM
Michael Hurst	NCAE
Lynne Weaver	NC Att. Gen. Off.
Al Ripley	NC Justice Ctr.
Paul Stock	NC BANKERS ASSN.
Phil LeGwan	NC AGO
Tony Egalon	NCAHP
Dewey T Matherly	CCCANC
DON HOBART	NC DOC
Joel Greenberg	AICCA / NovaDebt
Tripp Melton	Sen. Stevens office
Ann Lunt	OUDS
Bill Rustin	Capstrat
Ken Eudy	

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Susan "Smitty" Dotson Smith	NCAWA, Consumer Credit Counseling Service of WNC
Tami Hinton	(NCCOB) NC Office of the Commissioner of Banks
Joseph A. Smith Jr	NC Commissioner of Banks
[illegible]	NCA G's off. for the Comm. Bks.
Doug Miskew	Capstrat
Mike Croxton	Freedom Point
Leslie Barnes for Com	Capstrat
Larry Bowley	LBA
[illegible]	MANP.J TAYLOR
Colleen Kochanek	NCAWA
JABO Covert	CFSA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Lee-Ann Coe	CFSA
Theresa K	CAA
Dick Calder	attorney
Alice Garland	NCDOC
Shirley S. Fowler	State Treasurer
Allen Martin	NCDOT
D Johnson	NC AG
Kenneth W Willis	NCDOT
FRANK W. FOLGER	NCDOT
Ken Wright	BCBSNC
Bill Rowe	NC Justice Ctr.

Senate Commerce Committee
Tuesday, May 17, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentation: Buck Lattimore, Chair, Industrial Commission on Workers Compensation

Bills

SB 863	Loss of Workers' Comp for Fraud.	Senator Berger
SB 864	Workers' Comp/Injury to Extremities.	Senator Berger
SB 865	Workers' Comp/Employee Work Incentive.	Senator Berger
SB 866	Increase Cap on Loss of Workers' Organ.	Senator Berger
SB 969	Amend Workers' Comp. Act -3.	Senator Berger
SB 1112	Amend Workers' Comp. Act -2.	Senator Berger
SB 1151	Amend Workers' Comp. Act -1.	Senator Berger

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, May 17, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on May 17, 2005, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Tyler Churchill from Carrboro, sponsored by Senator Robert Atwater; and Douglas Chadwick from Chapel Hill, also sponsored by Senator Atwater.

Senator Soles then introduced Mr. Buck Lattimore, Chair of the Industrial Commission to speak on the history, status and issues involved in workers' compensation (see Attachment A for a copy of his PowerPoint presentation). He also handed out a Bulletin from the North Carolina Industrial Commission with Information about the North Carolina Workers' Compensation Act (see Attachment B).

Senator Soles called upon Mr. Bruce Clark, President of Capital Associated Industries, representing 2,500 employers. Mr. Clark explained the problems with current workers' compensation laws to be:

- The incentive to return to work has been removed.
- The system is out of balance between the employers and employees.

Senator Soles then called upon Mr. Jim Moore, Legislative Chair for the Academy of Trial Lawyers. He commented that North Carolina is consistently near the top of all states as the best place to do business. He added that the system is not broken.

Senator Soles called upon Senator Doug Berger, who had spent 10 years working at the Industrial Commission, to briefly explain a package of seven bills he has introduced (attached). Senator Berger commented that the current workers' compensation system is basically good, that it is fair to both employees and employers. He had a folder of information he provided each member of the committee (see Attachment C). However, he believes there are a few things that can be done to improve the system:

- SB 863, Loss of Workers' Comp for Fraud
- SB 864, Workers' Comp/Injury to Extremities
- SB 865, Workers' Comp/Employee Work Incentive
- SB 866, Increase Cap on Loss of Workers' Organ
- SB 969 (PCS), COLAs for Benefits for Permanent Disability
- SB 1112 (PCS), Own Physician
- SB 1151 (PCS), Expedite Payment

At the conclusion of Senator Berger's presentation, Senator Soles adjourned the meeting at noon.

Senator R.C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

North Carolina Industrial Commission

Chairman Buck Lattimore,

Biographical Data

Buck Lattimore, a native of Cleveland County, was appointed Chairman of the North Carolina Industrial Commission on August 1, 2000. His term on the Commission will expire in June 2006.

As Chairman, Lattimore is the agency's chief executive officer and chief judicial officer. He manages an $8.3 million budget, supervises 140 employees, and directs an agency responsible for the administration and adjudication of the workers' compensation claims in the state. The system currently processes almost 60,000 workers' compensation claims annually, orders over 9,000 mediations, conducts over 1,800 hearings, handles 500 appeals, and processes tens of thousands of motions, orders, and form approvals.

With more than 30 years of management experience in business and government, Buck Lattimore served as the Industrial Commission's Administrator from November 1994 until his appointment as Chairman. As Administrator, he was the agency's chief operating officer.

ATTACHMENT A

Workers' Compensation in North Carolina!

Buck Lattimore
Chairman
North Carolina Industrial Commission

North Carolina Industrial Commission COMMISSIONERS

- Buck Lattimore, Chairman
- Pamela Young, Vice Chair
- Bernadine Ballance, Commissioner
- Thomas Bolch, Commissioner
- Laura Mavretic, Commissioner
- Christopher Scott, Commissioner
- Dianne Sellers, Commissioner

North Carolina Industrial Commission

Adjudicates and Administers:

- The Workers' Compensation Act
- The Tort Claims Act
- The Childhood Vaccine-Related Injury Act
- The Law Enforcement Officers',Firemen's, Rescue Squad Workers', and Civil Air Patrol Members' Death Benefits Act
- The Act to Compensate Individuals Erroneously Convicted of Felonies

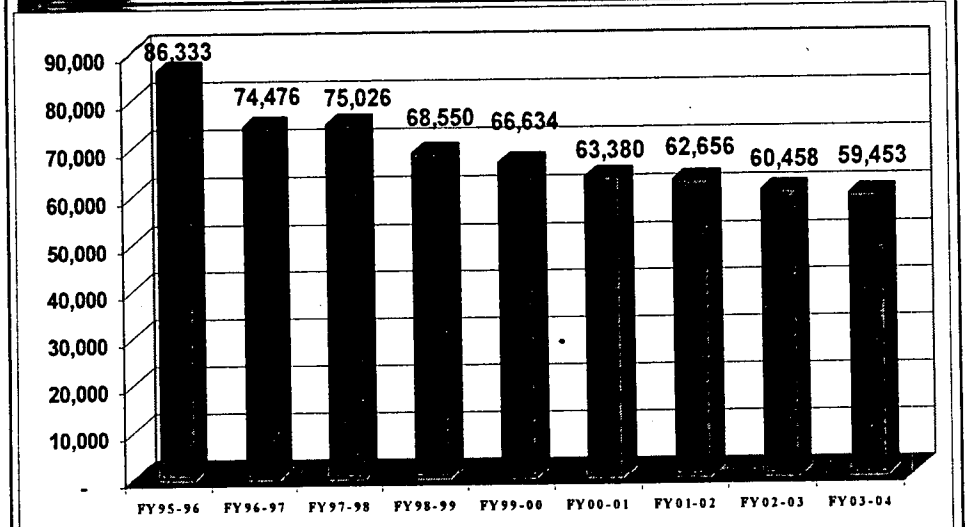
North Carolina's Workers' Compensation System

- **Critical Medical Care** and **Wage Loss Protection** for **3.5 Million Workers**



- **The Nation's 10th Largest Workers' Compensation System**

Total Number of Workers' Compensation Claims



Workers' Compensation Claims

- **88%** of Workers' Compensation Claims are <u>Non-Contested</u> and Handled Administratively by the Industrial Commission
- **12%** of Claims are <u>Contested</u> Requiring Mediation, Hearings, Appeals, etc.

NC INDUSTRIAL COMMISSION

Adjudication of Workers' Compensation Claims ...

NC INDUSTRIAL COMMISSION

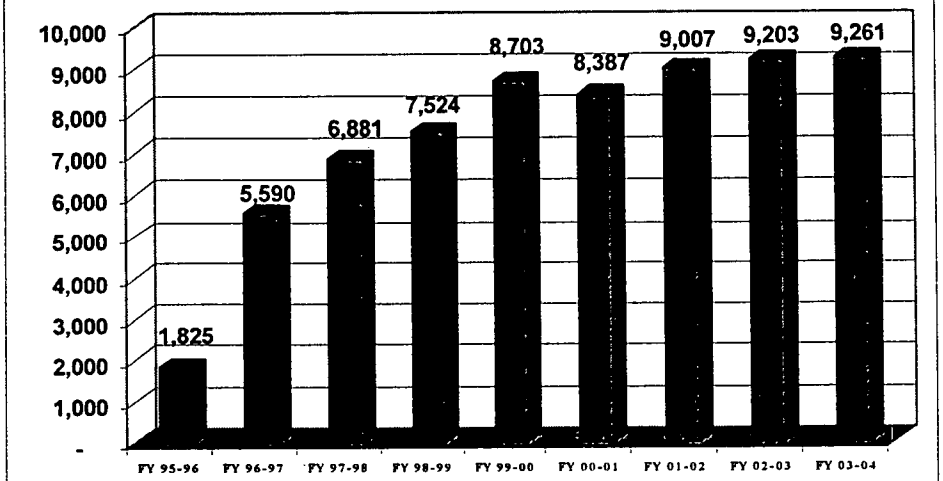
WORKERS' COMPENSATION:
A Major Component of the Judiciary

ANNUALLY

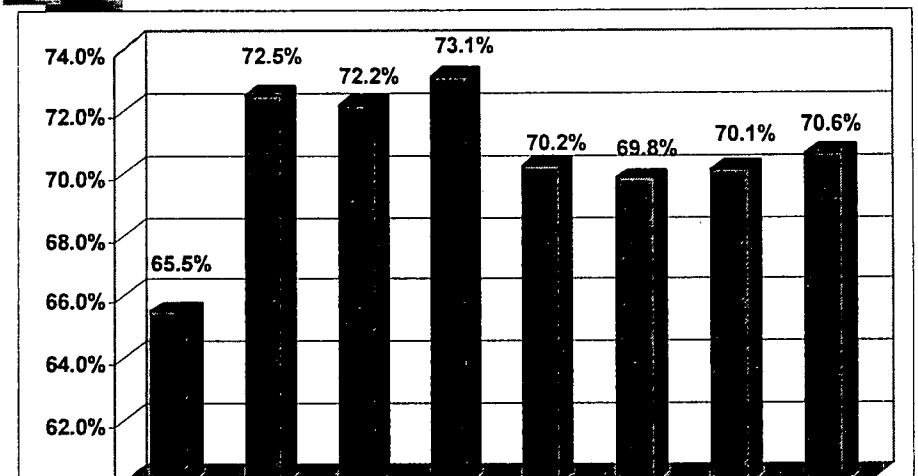
- 9,000+ MEDIATIONS
- 1,800+ HEARINGS
- 500+ APPEALS
- 10% COURT OF APPEALS CASELOAD



Workers' Compensation Cases Ordered to Mediation



Mediation Conference Settlement Rate



Workers' Compensation Contested Cases

- **Mediation**
  Mandatory Initially; Conducted by Independent Mediators
- **Deputy Commissioners** (19)
  Conduct Evidentiary Hearings
- **Office of the Executive Secretary**
  Conducts Informal (Telephonic) Hearings on Medical Motions & Motions to Suspend Benefits; Approves Compromise Settlement Agreements; Ombudsmen
- **Docket Section**
  Schedules Hearings, Maintains Records

Workers' Compensation Contested Cases

- **Deputy Commissioners**
  - 1645 Contested Cases Hearings Conducted
  - 8000+ Agreements for Disability
  - Rule on Motions, Orders, and Settlement Agreements
- **Office of the Executive Secretary**
  - 10,270 Compromise Settlement Agreements Approved
  - 1,416 Orders for Termination of Benefits
  - 1,220 Medical Motions
  - 4,872 Administrative Motions
  - 27,454 Calls Answered by Ombudsmen

Workers' Compensation Appeals

1. Commission Appeals
   (Panel of 3 Commissioners)
2. NC Court of Appeals
3. NC Supreme Court

NC INDUSTRIAL COMMISSION

Administration of Workers' Compensation Claims ...

North Carolina Industrial Commission

- **Claims Administration Section**
  Review Non-Contested Claims
- **Medical Billing Section**
  Review Medical Bills for Conformity with Schedules
- **Fraud Investigation Section**
  Investigate Employer & Employee Fraud for Prosecution
- **Nurses Section**
  Provide Assistance in Catastrophic Cases
- **Safety Education Section**
  Provide Training in Safety and Accident Prevention to 40,000 Workers Annually; Goal: Reduce Workers' Comp Claims

Workers' Compensation Fraud

- **Occurrence of Fraud**
  - 10% of All Cases Contain Some Element of Fraud
  - 1% of All Cases are Outright Fraudulent
- **Workers' Compensation Fraud Investigations (September '04-April '05)**
  - 173 Fraud Cases Received
    - 112 Employee Fraud
    - 52 Employer Fraud
    - 3 Carrier Fraud
    - 3 Medical Provider Fraud
    - 2 Attorney Fraud
  - 335 Cases of Non Insured Employers
  - $41,811 Penalties and Fines Collected (FY 04-05 to date)

NC INDUSTRIAL COMMISSION

The History of Workers' Compensation...

North Carolina Workers Compensation Act

Created by the 1929 General Assembly

- Prior to the Act
  - Employers had traditional common law defenses (contributory negligence, assumption of risk, etc.)
  - Employees could recover damages, including pain and suffering and had the right to trial by jury
- The Workers' Compensation Act was a Trade-Off
  - Employers gave up most rights to common law defenses in exchange for accepting limited liability
  - Employees gave up their right to trial by jury and some recovery of damages (i.e. pain and suffering) in exchange for swift and certain remedy for injuries

The Courts: "the Act is to be Construed Liberally."

- "[I]n close cases, the benefit of the doubt ...should be given to the employee in accordance with the policy of liberal construction and application of the Workers' Compensation Act." *Hoffman vs. Ryder Truck Lines*, (1982).
- "The Workers' Compensation Act is to be construed liberally so as to not deny benefits." *Deese vs. Southeast Lawn & Tree Expert Co.*, (1982).
- "It is equally well established that the evidence should be considered in the light most favorable to the plaintiff...." *Haynes v. Bellspar*, (1942).

The Question for the 2005 General Assembly...

Does a fair trade-off between employees and employers still exist?

NC INDUSTRIAL COMMISSION

Workers' Compensation Rates ...

Workers' Comp Insurance Rates

Base Rate

(Set by Insurance Commissioner based on loss costs)

+

Loss Multipliers

(Set by NC Rate Bureau)

=

Workers' Comp Insurance Rate

Workers' Comp Insurance Rates

Over the Past 10 Years,
North Carolina's
Workers' Compensation Insurance Rates
Have Been

REDUCED 27.3%

North Carolina Has

the 18th Lowest Rates
in the Country!!!

Source: Jim Long, NC Insurance Commissioner

Workers' Comp Loss Cost Multipliers

Multiply Base Rate by factors

.75 to 2.21

Allows Insurance Carriers to Inflate Loss Costs to Cover Actual Expense

Source: North Carolina Rate Bureau

Workers' Comp Costs

"Medical Costs per claim remain the major cost driver"

Source: WCRI, CompScope 5th Edition

[Pharmaceutical Costs considered the major driver among current medical costs]

Workers' Compensation in North Carolina

How Does Our System Compare ...

Insurance Rate Comparison

"For every year between 1986 and 2004 for which data were available, North Carolina insurance rates have been below the national average. While North Carolina rates were less than half of the national average between 1986 and 1990 and have increased relative to the national average since then, nevertheless North Carolina insurance rates as of 2004 (the latest year with data) were 10 percent below the national average."

Source: Oregon Dept of Consumer & Business Services
Dr John F. Burton Jr

Benefits Comparison

Total Cash Benefits Plus Medical Benefits Per 100,000 Workers For Employers Who Purchase Workers' Compensation Insurance

- National Average: $47,526,527
- North Carolina Average: $34,102,988
- Rank Among States: 35th

Source: Workers' Compensation Policy Review

Benefits Comparison

" In Every Year between 1998 and 2002 [the most recent year data is available], North Carolina total benefits [cash plus medical] payments per $100 of payroll were more than 20% below the national average of such payments."

Source: National Academy of Social Insurance
Dr John F. Burton Jr

Comparison of Incurred Benefits

[Incurred Benefits: Expected Lifetime benefits for injuries that occur in a particular year.]

"North Carolina incurred total benefits increased at a faster rate than the national average between 1990 and 1999, but...were always at least 14 percent below the national average. In the most recent year with data, North Carolina total benefits per 100,000 workers grew at a slower rate than total benefits in other states, and so North Carolina total benefits were more than a third below the national average in 2000."

Source: National Council on Compensation Insurance
Dr John F. Burton Jr

North Carolina Industrial Commission

Needs ...

Needs...

(Senate Bill 985 by Senator David Hoyle; Included in the Senate Budget)

- Add 2 Fraud Investigators
- Add 2 Ombudsmen
- Add 4 Safety Education Instructors

Needs...

(Also Included in the Senate Budget)

- **Add 4 <u>Special Deputies</u>**
- **<u>Funding</u> for Salary Adjustments of Staff to Prevent Turnover**

Together...

Working to Improve The Workers' Compensation System!

North Carolina Industrial Commission

ATTACHMENT B

BULLETIN

NORTH CAROLINA INDUSTRIAL COMMISSION

ADMINISTERING THE WORKERS' COMPENSATION ACT

STREET ADDRESS

DOBBS BUILDING ◦ 430 NORTH SALISBURY STREET

RALEIGH, NORTH CAROLINA 27603-5937

MAILING ADDRESS

4340 MAIL SERVICE CENTER

RALEIGH, NC 27699-4340

Internet Address: http://www.comp.state.nc.us/

April 1, 2005

Information About The North Carolina Workers' Compensation Act

NORTH CAROLINA INDUSTRIAL COMMISSION

Michael F. Easley, Governor

Buck Lattimore, Chairman

Bernadine S. Ballance, Commissioner
Thomas J. Bolch, Commissioner
Laura K. Mavretic, Commissioner
Christopher Scott, Commissioner
Dianne C. Sellers, Commissioner
Pamela T. Young, Commissioner

Barbara Levine, Administrator

Tracey Weaver, Executive Secretary

Ombudsmen: (800) 688-8349, (919) 807-2501

Fax: (919) 715-0282

Claims Section:	(919) 807-2502	**Mediation Section:**	(919) 807-2586
Commissioners:	(919) 807-2500	**Medical Billing Section:**	(919) 807-2503
Computer Support:	(919) 807-2591	**Occupational Disease Section:**	(919) 807-2502
Deputy Commissioners:	(919) 807-2500	**Ombudsman Section:**	(919) 807-2501
Docket Section:	(919) 807-2504	**Safety Section:**	(919) 807-2603
Executive Secretary:	(919) 807-2575	**Statistics Section:**	(919) 807-2506
Fraud Investigations:	(919) 807-2570	**Workers' Compensation Nurses:**	(919) 807-2616

FOR ANSWERS TO QUESTIONS...

About:	Telephone:	
General questions and disputes in cases; coverage information	**Ombudsmen:**	**(800) 688-8349** **(919) 807-2501**
Filing and case status	**Docket section:**	**(919) 807-2504**
Application of the Act, Settlement Agreements and change of physicians	**Executive Secretary:**	**(919) 807-2575**
Appeals, Rules and Policies	**Commissioners:**	**(919) 807-2500**
Medical Bill Approvals	**Medical Billing Section:**	**(919) 807-2503**
Medical Fee Schedule	**http://www.comp.state.nc.us/ncic/pages/feesched.asp**	
Rehabilitation Assistance	**Workers' Compensation Nurses**	**(919) 807-2616**
Workplace Safety Programs	**Safety Section:**	**(919) 807-2603**
Hearings in Contested Cases	**Docket section:**	**(919) 807-2504**
Pending Occupational Disease Claims	**Occupational Disease Section:**	**(919) 807-2502**
Publications and Forms	**Main Number:**	**(919) 807-2527**
Form Agreements, Attorney Fees	**Claims Section:**	**(919) 807-2502**
Personnel and Contracts	**Administrator:**	**(919) 807-2500**
Workers' Compensation Fraud	**Fraud Section:**	**(919) 807-2570** **(888) 891-4895**
Mediation of Claims	**Mediation Section:**	**(919) 807-2586** **(888) 242-5757**

Please Note...

This bulletin is designed to give general information only. It is not a law book. Further information may be obtained by writing a letter to the Executive Secretary or Ombudsmen, North Carolina Industrial Commission, or by consulting with an attorney of your choice which may be at your expense. If you need assistance locating an attorney in your community who is familiar with Workers' Compensation law, you may contact the N.C. Bar Association's nonprofit Lawyer Referral Service. Just telephone toll free in North Carolina to **(800) 662-7660** – or dial **(919) 677-8574** from out of state or **(919) 677-8574** from the Raleigh/Durham/Chapel Hill area – to obtain the name of an attorney willing to discuss your question for a nominal fee or no fee. Mention Workers' Compensation when requesting a referral. When writing or calling the Commission about a specific case, always give the name of the injured employee, the I.C. file number for the claim or the employee's social security number, and, if available, the name of the employer and date of injury.

Publications and Forms

Publications and forms may be obtained by contacting the **N.C. Industrial Commission, 4340 Mail Service Center, Raleigh, NC 27699-4340**, calling **(919) 807-2527**, or e-mailing Carolyn Wall at **wallc@ind.commerce.state.nc.us**. Orders require prepayment. Please call or e-mail to obtain current prices and to confirm quantities available.

See http://www.comp.state.nc.us/ncic/pages/feesched.asp to view portions the Commission's Medical Fee schedule online. To buy the complete North Carolina Workers' Compensation Medical Fee Schedule in electronic format, call Emmy Walsh of Ingenix, Inc. at **(800) 765-6088**, ext. **23483**.

EMPLOYERS' OBLIGATION TO OBTAIN AND MAINTAIN COVERAGE

Businesses covered by the Workers' Compensation Act are required by law to obtain insurance or qualify as self-insureds for possible compensation liability to their employees. All businesses employing three (3) or more employees on a regular basis are covered, except that agricultural employments with fewer than ten (10) regular employees, certain sawmill and logging operators, and all domestic employees are exempt. Businesses with any employee whose work involves the use of or presence of radiation are required to have coverage. Corporate officers, partners, and owners who are employed in the business may be exempted from coverage. However, corporate officer/employees are counted in determining whether the business has three or more employees. Sole proprietors and partnerships who have three (3) or more employees must purchase coverage for these employees and may elect to include coverage for themselves.

How to Obtain Workers' Compensation Insurance

If you are subject to the Act, you are required to carry Workers' Compensation insurance. In order to obtain Workers' Compensation insurance, contact your independent agent about your coverage needs and the types of coverage available to you.

Types of Workers' Compensation Coverage

There are three (3) types of Workers' Compensation coverage:

1. An independent agent can write coverage solely for your business.
2. You can become a member of or contributor to a Self-Insured Fund. A Self-Insured Fund is a "blanket coverage" of Workers' Compensation insurance in which you pay into a large fund which provides the coverage for your business and all those who pay into that fund. Your contribution to the fund is based on coverage for your business and all those who pay into that fund. Your contribution to the fund is based on your number of employees, the rate assigned to them by the North Carolina Rate Bureau and your payroll.

   EXAMPLE: You are a General Contractor who is subject to the Act. A Builders Association offers a Self-Insured Fund program. You become a member of the Builders Association and thus pay into their fund for coverage on your business.
3. You can become Self-Insured. In order to be Self-Insured, you must go to the Department of Insurance and post bond showing that you have the financial means to provide coverage for your employees.

   NOTE: There is a difference between being Self-Insured and being part of a Self-Insured Fund. Many people mistakenly think they are Self-Insured and actually have coverage through a Self-Insured Fund.

How Your Workers' Compensation Insurance Premiums Are Set

The North Carolina Rate Bureau (**(919) 783-9790**) sets rates for specific types of employment and bases premiums on $100.00 of payroll. Policies are written annually, and premiums increase if there is an injury and decrease if there is not one. Premiums also increase or decrease based upon the number of employees and the payroll. (In the Self-Insured Fund situation, if there is an injury of an employee of one of the other contributors to the fund, their contribution to the fund increases, but the other members' contributions do not increase unless they have an injury.)

INJURIES COVERED

Employees are entitled to benefits if, while carrying out activities for the benefit of their employer, they suffer an injury by accident, a "specific traumatic incident," resulting in a hernia or back injury, or an "occupational disease." An "accident" is an interruption of the regular work routine and the introduction of unusual circumstances, such as a slip, trip, fall, or other unusual activity, likely to result in unexpected consequences. A "specific traumatic incident," as defined by our courts, includes "injuries that occur during normal work activities." The claimant need not show "an instantaneous occurrence," or "an external cause or unusual conditions." However, "injuries that occur gradually, over long periods of time, are not specific traumatic incidents." If the work-relatedness of a hernia is disputed, an employee must show that the hernia appeared suddenly following an accident and did not exist prior to the accident or incident. All injuries must "arise out of and in the course and scope of" the covered employment to be compensated.

Businesses complying with the Act and their employees may not be sued in the Courts by employees for work-related injuries, except for intentional assaults and conditions so grossly unsafe as to make injury substantially certain. Businesses may obtain the benefits and protections of the Workers' Compensation Act by purchasing compensation insurance, by being self-insured, or by joining a self-insurance pool.

OCCUPATIONAL DISEASE

Generally, an employee is entitled to benefits for disability due to a condition to which the employment significantly contributed, or if the employment was a significant factor in causing the disease's development, and if the employment exposed the worker to a greater risk of contracting the disease than the public generally. Where an employee is exposed to the same injurious agent at the place of business of more than one employer, the claim should be filed with the employer on whose premises he was last injuriously exposed.

GIVING NOTICE TO EMPLOYER AND FILING CLAIMS

To obtain benefits, an employee or his representative must give the employer written notice of the accident within 30 days, or in instances of occupational disease (excepting asbestosis, silicosis, or lead poisoning) within 30 days of being advised by competent medical authority that the employee has the occupational disease, unless reasonable excuse is made for not giving notice and no prejudice results to the employer/carrier. **NOTICE** should be given by providing a completed copy of the Commission's Form 18 to the employer and the Commission. SUBJECT TO CERTAIN EXCEPTIONS, AN EMPLOYEE LOSES THE RIGHT TO CLAIM COMPENSATION UNLESS A CLAIM IS FILED WITH THE COMMISSION WITHIN TWO (2) YEARS AFTER THE ACCIDENT, OR IN CASES OF AN OCCUPATIONAL DISEASE, WITHIN TWO (2) YEARS AFTER DEATH, DISABILITY, OR DISABLEMENT AND BEING ADVISED BY COMPETENT MEDICAL AUTHORITY THAT THE EMPLOYEE HAS AN OCCUPATIONALLY RELATED DISEASE, whichever last occurs; provided, that if the injury is due to exposure to radiation, the two (2) year period runs from the time the employee suffered incapacity and knew or should have known that the disease or condition was caused by his employment. A **CLAIM** should be filed by sending to the Commission a statement of claim, preferably on the Commission's Form 18. **COPIES** should be sent to the employer or its insurance carrier. Claimants using informal statements will be asked to complete forms requiring information necessary to process the case.

EMPLOYERS' OBLIGATION TO RECORD AND REPORT INJURIES

All work-related injuries requiring medical attention (other than first aid at the work place) should be reported by the employer to its insurance company or administrator, who will report the injury to the Industrial Commission on I.C. Form 19 if the injury results in more than $2000.00 in medical expenses or more than one day's lost time from work. A COPY OF THE COMPLETED FORM 19, WITH "IMPORTANT INFORMATION FOR EMPLOYEE" ON THE BACK, MUST BE FURNISHED TO THE EMPLOYEE OR HIS OR HER SURVIVORS. In addition, the employer is required to provide a blank Form 18 for use by the employees with the copy of the Form 19.

BENEFITS

Wage Replacement and Cash Benefits

Temporary Total Disability: If the employee remains unable to earn wages after the first seven (7) days of disability, he or she is entitled to weekly benefits equal to two-thirds (2/3) of his or her average weekly wage up to the maximum compensation rate (see below). After disability has continued more than twenty-one (21) days, the employee is entitled to receive compensation for the first seven days of disability. The days counted do not have to be consecutive. Weekend days, holidays, and any workday in which the injured employee does not earn a full day's wages because of the injury are counted as a day of disability, even though the employee may earn some wages.

Temporary Partial Disability: If upon obtaining post-injury employment, the employee is unable to earn wages as great as those earned pre-injury, the employee is entitled to compensation equal to two-thirds (2/3) of the difference between the post-injury and pre-injury average weekly wages, so long as the amount does not exceed the statutory maximum weekly benefit. Temporary partial disability benefits may not continue beyond three hundred (300) weeks from the date of injury, and any number of weeks wherein temporary total disability benefits were paid will be deducted from the 300 week maximum.

Permanent Partial Disability: If, at the end of the healing period, there is a permanent impairment to one of the parts of the body listed below, the employee may receive a set period of benefits without regard to his ability to earn wages. Total loss of use of the part entitles the employee to two-thirds (2/3) of his average weekly wage, times the number of weeks shown following the body part below. Benefits for less than total loss are figured on a percentage basis. For example, twenty percent (20%) of 45 weeks' compensation is nine (9) weeks. Alternatively, in cases where the employee has a permanent impairment to one of the parts of the body listed below and is unable to earn wages as great as before the injury, the employee may choose to receive benefits for two-thirds (2/3) of the wage difference for a period not to exceed 300 weeks from the date of injury rather than receiving benefits for a set period based on the permanent impairment. The 300-week period, however, will be reduced by the number of weeks Temporary Total Disability Compensation was paid.

Thumb	75 weeks	Arm	240 weeks
First or index finger	45 weeks	Foot	144 weeks
Second or middle finger	40 weeks	Leg	200 weeks
Third or ring finger	25 weeks	Eye	120 weeks
Fourth or little finger	20 weeks	Hearing (one ear)	70 weeks
Great toe	35 weeks	Hearing (both ears)	150 weeks
Any other toe	10 weeks	Back	300 weeks
Hand	200 weeks		

The percentage of disability is determined based on physicians' ratings of the percentage of physical impairment. If there is a dispute between physicians regarding ratings, the Commission will determine the percentage of disability. If either party is dissatisfied with the treating physician's rating, it may obtain the "second opinion" of another doctor. The employee, upon approval by the Commission, is entitled to a single second opinion rating by a doctor of his or her choice at the employer's expense. To obtain the Commission's Rating Guide, see "Publications and Forms" above. If, however, the employee is unable to earn any wages in any employment, he or she may elect to receive either the carrier's offer for the rating or for his ongoing disability, whichever remedy provides the most reimbursement.

Total and Permanent Disability: The loss of both hands, both arms, both feet, both legs, or both eyes, or any two thereof, constitutes total and permanent disability, and entitles the worker to weekly benefits and medical compensation during his or her lifetime.

Disfigurement and Damage to Other Organs: If the injury leaves facial or head scars which seriously disfigure the person, or causes the loss or permanent injury to an important organ of the body, the employee may be awarded additional compensation not to exceed $20,000.00. The maximum payable for serious bodily disfigurement is $10,000.00. No compensation is allowed for scars where the employee is paid for loss or partial loss of use of the same member. The employee is also entitled to payment for disfigurement due to the loss or crowning of permanent teeth.

Figuring the Compensation Rate: The weekly rate of compensation cannot be less than $30.00 nor more than $704.00 for injuries occurring after January 1, 2005. The maximum weekly benefit is adjusted annually to equal approximately 110% of the average North Carolina wage. This rate of compensation remains the same during the life of the claim. (The maximum weekly compensation rate for 1997 it was $512.00, for 1998 it was $532.00, for 1999 it was $560.00, for 2000 it was $588.00, for 2001 it was $620.00, for 2002 it was $654.00, for 2003 it was $674.00 and for 2004 it was $688.00) The average weekly wage is usually computed by averaging all wages earned by the employee in the employment in which he or she was injured (including overtime, paid holidays, special allowance for board, lodging, etc.), during the 52 weeks prior to the injury. If the employee has lost more than seven (7) consecutive calendar days at one or more times, these days are excluded from the calculation. If the employee has worked only a short time in the employment in which injured, or for other reasons this formula does not fairly reflect earnings, the Industrial Commission will compute a fair average weekly wage for him as provided by the Act. If the employee is under eighteen (18) years of age, a different rate may apply (see "Minors and Incompetents" below). The Commission's Claims Section can calculate the average weekly wage from information submitted on the Commission's Form 22. **[To view or print this Form 22 and other PDF versions of NCIC forms, you must first download and install a FREE Adobe® Acrobat® Reader.]**

Medical Compensation

Employers must provide, and injured employees must accept, all reasonable medical, surgical, hospital, nursing, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief, and tend to lessen the period of disability, and any artificial members as may reasonably be necessary at the end of the healing period, which are needed due to the compensable injury. The costs of medical compensation are in addition to cash benefits,

and do not offset or reduce them. If the employer denies liability or fails to provide treatment, or in the case of an emergency, the employee may select the physician or hospital but must promptly request Industrial Commission approval.* The employer or its insurance carrier may select the treating physician and other providers of medical compensation, subject to contrary orders of the Commission. If the employee is dissatisfied with the services rendered by providers selected by the employer, the employee may request the Commission order a change of treatment, or approve treatment by providers of employee's selection.* Such request should state reasonable cause, be submitted with any medical opinions or records which support the request, and a copy of the request should be simultaneously sent to the employer or its insurance company. If an employee fails to cooperate with a provider selected by the employer after being ordered to do so by the Commission, compensation may be suspended while such refusal continues.

The right to medical compensation ends two years after the last payment of medical or indemnity compensation unless, prior to expiration of this period, a Form 18M Application is filed by the employee showing the substantial risk of the necessity of future medical treatment, and is thereafter approved by the Commission.

As a final note, rules governing rehabilitative services in workers' compensation cases have been adopted and may be obtained through the Industrial Commission if needed.

* Requests for Industrial Commission approval must be made in writing and should be directed to the Executive Secretary's Office.

Death Benefits

Death benefits are payable when an employee dies due to an occupational disease, due to an accident if the death occurs within six (6) years thereafter, or within two (2) years of the final determination of disability, whichever is later. THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS OF THE DATE OF DEATH IN THE NAME OF THE DEPENDENTS OR NEXT OF KIN OF THE DECEDENT EMPLOYEE. IT SHOULD NOT BE FILED FOR THE ESTATE BY THE EXECUTOR OR OTHER PERSONAL REPRESENTATIVE OF THE DECEASED. Death is compensated by payment of two-thirds (2/3) of the decedent employee's average weekly wage, or the maximum compensation rate for a minimum period of 400 weeks; $3,500.00 for actual funeral expenses, payable to the person or firm actually entitled to it; and any medical expenses incurred due to the mortal injury or disease. A minor child or disabled spouse may receive more than 400 weeks of benefits.

Minors and Incompetents

An employee under the age of 18 is entitled to receive the same benefits as other employees if injured. For the purposes of calculating compensation for a minor's permanent disability, death, or temporary total disability for a period exceeding 52 weeks, the minor's average weekly wage shall be considered to be the same paid to adult employees employed by the same employer at the time of the accident in a similar or like class of work to which the injured minor employee would probably have been promoted to if not injured.

No time limitation under the Workers' Compensation Act runs against a minor or incompetent until a guardian or trustee has been appointed to represent their interests. The Commission may appoint a guardian *ad litem*, for the purpose of pursuing the claim on behalf of the minor in litigation before the Commission. However, a guardian *ad litem* may not receive cash compensation on behalf of a minor or incompetent. Compensation may be received by a general guardian or guardian of the estate of a minor or incompetent appointed by the Clerk of Superior Court of the county in which the employee resides; by the trustee or committee having powers over the employee's financial affairs; by the Clerk, if small sums are due an incompetent; and, when both a surviving spouse and minor children are entitled to receive compensation due to the death or injury of a deceased employee, the surviving spouse may receive the compensation for the use of both himself/herself and the minor children. In certain circumstances, a minor employee may sign agreements and receipts for payments of compensation although the Commission may require the signature of a parent or person standing in place of a parent.

DENIAL OF A CLAIM

An employee who submits a written claim (I.C. Form 18, or its equivalent), in a case where no compensation has been initiated by the employer to the employee, is entitled to a detailed statement from the employer or insurance carrier of grounds for denying the claim within 14 days of receipt, unless time is extended by the Commission's Executive Secretary's Office. The employee desiring a hearing on the claim before the Industrial Commission must make the request on the I.C. Form 33. A statement making a claim or requesting a hearing must be received by the Commission within two years of the date of injury to preserve the employee's right to pursue the claim. If the claim or request for hearing is not made on the Commission's official forms (Form 18, Form 33R, or Form 33, respectively), claimant will be asked to complete those forms.

AGREEMENTS TO PAY COMPENSATION

All agreements to pay compensation must be approved by the Commission. The most common forms of agreements are the I.C. Form 21 for the initial period of disability, the I.C. Form 26 for subsequent periods of disability, and the Compromise Settlement Agreement (or "clincher") under which the employee receives a lump sum of money and payment of any remaining medical compensation bills in return for terminating the claim and any right to reopen it.

(In cases of direct pay or pay without prejudice, a Form 60, *Employer's Admission Of Employee's Right To Compensation*, or a Form 63, *Notice To Employee of Payment Without Prejudice*, should be submitted as soon as the employee becomes entitled to compensation. A copy should be sent to the employee, and the original of the form should be sent to the Industrial Commission.)

A Form 21, *Agreement for Temporary Total Disability or Temporary Partial Disability*, should state that the compensation is payable for the "necessary" period unless for some reason the period of temporary total disability or temporary partial disability is actually known (such as having already ended). The agreement may be submitted subject to future correction of the compensation rate used. Unless the employee successfully returns to work, dies, or enters into another agreement, the employer or carrier must apply to the Commission to terminate the compensation on the Commission's Form 24 or request a hearing once the Form 21 has been approved.

A Form 21 or 26 agreement may be entered into after the end of the healing period to provide for payment of temporary partial disability benefits or permanent partial disability benefits based upon a doctor's evaluation, or "rating," of any remaining physical impairment. The employee is entitled to a single second opinion by a physician of his or her choice at the employer or carrier's expense when the physician approved by the employer or carrier has rated and/or released the employee. The employee retains the right to reopen the case for further benefits within two years of the last payment of compensation if the employee can show that there has been a substantial change in the condition that resulted from the compensable injury.

The Compromise Settlement Agreement, or "clincher," provides for payment of all cash benefits and medical compensation due, and an additional sum in return for the employee's giving up his or her right to reopen the case based upon change of condition.

MEDICAL AND LEGAL FEES

Attorney's Fees

It is unlawful for any attorney or other person to accept a fee, gift, or any remuneration for any services rendered in connection with the claim of a worker seeking compensation unless such fee or other consideration has been approved by the Industrial Commission.

Fees for Medical Compensation

Subject to the provisions of N.C. Gen. Stat. Section 97-25.3, *Preauthorization*, the Industrial Commission shall adopt and publish a Fee Schedule, pursuant to the provisions of N.C. Gen. Stat. Section 97-26(a), fixing maximum fees, except for hospital fees pursuant to N.C. Gen. Stat. Section 97-26(b), which may be charged for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The fees prescribed in the applicable published Fee Schedule shall govern and apply in all cases. However, in special hardship cases where sufficient reason is demonstrated to the Industrial Commission, fees in excess of those so published may be allowed. Persons who disagree with the allowance of such fees in any case may make application for and obtain a full review of the matter before the Industrial Commission as in all other cases provided. Copies of this published Fee Schedule may be obtained from Medicode at **(800) 765-6023.**

A provider of medical compensation shall submit its statement for services within seventy-five (75) days of the rendition of the service or if treatment is longer, within thirty (30) days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Industrial Commission. However, in cases where liability is initially denied but subsequently admitted or determined by the Industrial Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within thirty (30) days of the receipt of the statement, the employer, or carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the Industrial Commission for approval or send the provider written objections to the statement. If an employer, carrier/ administrator, or managed care organization disputes a portion of the provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Industrial Commission. If any bill for medical compensation services is not paid within sixty (60) days after it has been approved by the Industrial Commission and returned to the responsible party, or when the employee is receiving treatment through a managed care organization, within sixty (60) days after the bill has been properly submitted to an insurer or managed care organization, there shall be added to such unpaid bill an amount equal to ten percent (10%), which shall be paid at the same time as, but in addition to, such bill, unless late payment is excused by the Industrial Commission. When the ten percent (10%) addition to the bill is contested, any party may request a hearing by the Industrial Commission pursuant to N.C. Gen. Stat. Section 97-83 and N.C. Gen. Stat. Section 97-84.

When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the payee hospital, upon request, shall provide all reasonable access and copies of appropriate records, without charge or fee, to the person(s) chosen by the payor to review and audit the records.

The responsible employer or carrier/administrator shall pay the statements of medical compensation providers to whom the employee has been referred by the authorized treating physician, unless said physician has been requested to obtain authorization for referrals or tests, provided that compliance with such request does not unreasonably delay the treatment or service to be rendered to the employee.

A health care provider may not pursue a private claim against an employee for all or part of the costs of medical treatment which have been provided to that employee unless (1) the employee's claim for treatment is finally adjudicated to be non-compensable; or (2) the employee fails to request a hearing following a denial of liability by the employer. Subsequent to an unanswered denial of liability or an adjudication that the treatment is non-compensable, the insurer (or self-insured employer) is liable to any medical care providers whose services had previously been authorized by the insurer or employer.

MOST FREQUENTLY ASKED QUESTIONS

1. **Who is required to provide Workers' Compensation coverage?**

   Any employer who employs three or more employees.

   NOTE: Every executive officer selected or appointed and empowered in accordance with the charter and bylaws of a corporation is considered an employee of such corporation. For example, a corporation with two officers and one employee would be required to provide Workers' Compensation coverage. Any employer in which one or more employees are employed in activities which involve the use of or presence of radiation is required to have coverage.

2. **What must an employee do when an injury occurs?**

   Report the injury to the employer, orally and in writing, **immediately** and in any event within 30 days.

3. **What should be done if the employer fails or refuses to report an injury?**

   Employee should file a claim (Form 18 or 18B) within two years of the accident with the Industrial Commission.

4. **Who provides and directs medical treatment?**

   The employer or its insurance company, subject to any Commission orders, provides and directs medical care. The Commission may permit the employee to change physicians or approve a physician of employee's selection when good grounds are shown. However, payment by the employer or carrier is not guaranteed unless written permission to change physicians is obtained from the employer, carrier, or Commission before the treatment is rendered.

5. **Chiropractic Rules:**

   "If the employer grants permission to seek medical treatment from a chiropractor, the employee is entitled to 20 visits if medically necessary. If additional visits are needed, the chiropractor should request this authorization from the employer."

6. **When can reimbursement for sick travel be collected?**

   Employees are entitled to collect for mileage for medical treatment in Workers' Compensation cases at the rate of 25 cents a mile for travel prior to June 1, 2000 and at the rate of 31 cents a mile for travel on or after June 1, 2000, provided they travel 20 miles or more round trip. Special consideration will be given to employees who are totally disabled.

   NOTE: The Industrial Commission has given the self-insurers and insurance carriers permission to pay drug and travel expenses directly to the employee without approval from the Commission.

7. **What happens if in an emergency the employer fails or refuses to provide medical treatment?**

   The employee may obtain the necessary treatment from a physician or hospital of his own choice, but must promptly request the Commission's approval.

8. **When do I become eligible for lost wage compensation?**

   No compensation is due for the first seven (7) days of lost time unless the disability exceeds 21 days. Therefore, the first check will not include payment for days 1-7. Payment for those days will be made should the disability continue beyond 21 days.

9. **How often are compensation payments made?**

   Weekly.

10. **At what rate of pay?**

    66 2/3% of the average weekly wage, not to exceed $704.00* (2005 maximum) per week.

    * The maximum weekly benefit is adjusted annually.

11. **How long is the employee eligible to receive lost-time weekly benefits?**

    Until the employee is able to return to work.

12. **What is permanent partial disability?**

    Total loss or partial loss of use of a member of the body or inability to earn the same wages in any employment as earned at the time of injury.

13. **Who determines permanent partial disability?**

    The Commission, based on the impairment ratings of physicians or evidence of consideration of wage earning capacity.

14. **What happens when the employer refuses to acknowledge the claim?**

    When liability for payment of compensation is denied, the Commission, claimant, his or her attorney, if any, and all known providers of health care shall be promptly notified of the reason for such denial. The denial Form 61 shall not be worded in general terms, but must detail the exact reason for the denial of liability.

    (a) If a claim is denied by the insurance company or self-insurer, the employee may request a hearing before the Industrial Commission by submitting a Form 33, Request for Hearing.

    (b) Medical providers may bill the employee only after it has finally been determined that it is not a compensable workers' compensation claim.

NOTICE

THIS BULLETIN IS NOT INTENDED TO ANSWER ALL QUESTIONS REGARDING WORKERS' COMPENSATION OR ALL PROBLEMS ARISING UNDER THE WORKERS' COMPENSATION ACT.

For further information, contact:

North Carolina Industrial Commission
4340 Mail Service Center
Raleigh, North Carolina 27699-4340

Need Workers' Compensation Information? Need Help with a Claim?

For information, help with a claim, or Workers' Compensation inquiries, call:

Ombudsmen: (800) 688-8349
(919) 807-2501
Fax: (919) 715-0282

Ombudsmen assist unrepresented claimants, employers, and other parties to enable them to protect their rights. In addition, the Ombudsmen serve as the information source for the North Carolina Industrial Commission and answer questions pertaining to all aspects of Workers' Compensation.

N.C. Industrial Commission • 4340 Mail Service Center • Raleigh, NC 27699-4340
Main Telephone: **(919) 807-2500** • Fax: **(919) 715-0282**
NCIC Home Page: **http://www.comp.state.nc.us/**

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 863

Short Title:	Loss of Workers' Comp for Fraud.	(Public)
Sponsors:	Senators Berger of Franklin; Atwater, Berger of Rockingham, Bingham, Boseman, Cowell, Hartsell, and Snow.	
Referred to:	Judiciary II.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO TERMINATE PAYMENTS OF WORKERS' COMPENSATION OTHER THAN MEDICAL COMPENSATION FOR EMPLOYEES WHO ARE CONVICTED OF HAVING FRAUDULENTLY OBTAINED THE COMPENSATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-88.2 is amended by adding a new subsection to read:

"(a1) Any compensation that an employee is receiving under G.S. 97-29 or G.S. 97-30 shall be terminated, and the employee is not entitled to compensation under G.S. 97-31 when the employee is convicted under subsection (a) of this section for making a false statement or representation in order to obtain the compensation. This subsection does not apply to any benefit or payment the employee receives as medical compensation under G.S. 97-25."

SECTION 2. This act becomes effective October 1, 2005, and applies to all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved on or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered on or after that date; and all awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded on or after that date.

SENATE BILL 863:
Loss of Workers' Comp for Fraud

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 3, 2005
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 863 would provide that workers' compensation payments would be terminated if the employee receiving payments is convicted of having fraudulently obtained the compensation.***

CURRENT LAW: G.S. 97-88.2(a) makes it unlawful to willfully make a false statement or representation of material fact for the purpose of obtaining or denying, or assisting another to obtain or deny, workers' compensation payments. Violation is a Class 1 misdemeanor if the amount at issue is less than $1000. It is a Class H felony if the amount at issue is $1000 or more. The court is authorized in such a case to order restitution.

BILL ANALYSIS: Senate Bill 863 would provide that, if an employee is convicted under G.S. 97-88.2(a), then any compensation the employee is receiving under G.S. 97-29 (for total incapacity) or G.S. 97-30 (for partial incapacity) would be terminated, and the employee would not be entitled to compensation under G.S. 97-31 (which sets out rates of compensation for specific injuries). The employee would still be entitled to payments received under G.S. 97-25 (medical expenses of the employee paid by the employer).

EFFECTIVE DATE: The bill would be effective when it becomes law and would apply to agreements approved by the NC Industrial Commission on or after that date, all orders or decisions of the NC Industrial Commission on or after that date, and all awards of the NC Industrial Commission on or after that date.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 864

Short Title:	Workers' Comp/Injury to Extremities.	(Public)
Sponsors:	Senators Berger of Franklin; Boseman, Cowell, Holloman, Kinnaird, Nesbitt, Snow, and Soles.	
Referred to:	Judiciary II.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW COMPENSATION UNDER THE WORKERS' COMPENSATION ACT FOR INJURIES OF THE EXTREMITIES OF THE BODY OF THE EMPLOYEE WHERE THE INJURY ARISES OUT OF AND IN THE COURSE OF EMPLOYMENT AND IS THE DIRECT RESULT OF A SPECIFIC TRAUMATIC INCIDENT OF THE WORK ASSIGNED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-2(6) reads as rewritten:

"(6) Injury. – "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident. With respect to ~~back injuries,~~injuries to the back or extremities of the body, however, where the injury ~~to the back~~ arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, "injury by accident" shall be construed to include any disabling physical injury to the ~~back~~back or extremities of the body arising out of and causally related to such incident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices ~~which~~ that function as part of the body; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for unless injury to them is incidental to a compensable injury."

SECTION 2. This act is effective when it becomes law and applies to all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved on or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered on or after that date; and all

SENATE BILL 864:
Workers' Comp/Injury to Extremities

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 3, 2005
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 864 would add injury to extremities to those injuries for which an employee may be compensated under the Workers' Compensation Act if the injury arises out of and in the course of employment and is the direct result of a specific traumatic incident.

CURRENT LAW: G.S. 97-2(6) defines injury for purposes of determining when compensation is payable to an employee under the Workers' Compensation Act. An injury is defined as an injury that arises out of and in the course of employment that occurs by accident. According to NC case law, an "accident" is an unexpected or unusual event, and an injury that occurs as part of an employee's usual and customary work routine is not compensable under the Act. In 1983, the definition of injury was amended as it related to back injuries. "Injury by accident" now includes any disabling back injury arising out of and causally related to a specific traumatic incident of the work assigned to an employee. The effect of the amendment was to relax the requirement that there be some unusual circumstance that accompanies a back injury. Back injuries that occur gradually over a long period of time are not compensable, but events that occur over a cognizable time period that cause a back injury are compensable.

BILL ANALYSIS: Senate Bill 864 would amend the definition of injury so that "injury by accident" would also include any injury to extremities that arises out of and is causally related to a specific traumatic incident of the work assigned to an employee. This would allow employees to be compensated for those injuries without showing that an unusual circumstance accompanied the injury.

EFFECTIVE DATE: The bill would be effective when it becomes law and would apply to agreements approved by the NC Industrial Commission on or after that date, all orders or decisions of the NC Industrial Commission on or after that date, and all awards of the NC Industrial Commission on or after that date.

S0864e1-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 865

Short Title:	Workers' Comp/Employee Work Incentive.	(Public)
Sponsors:	Senators Berger of Franklin; Bingham, Boseman, Cowell, Hartsell, Holloman, Kinnaird, Nesbitt, Snow, and Soles.	
Referred to:	Judiciary II.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE AN INCENTIVE TO RETURN TO WORK FOR EMPLOYEES WHO ARE PARTIALLY INCAPACITATED AND RECEIVING COMPENSATION UNDER THE WORKERS' COMPENSATION ACT BY REPEALING THE PROVISION THAT LIMITS SUCH EMPLOYEES TO RECEIVE COMPENSATION FOR NO LONGER THAN THREE HUNDRED WEEKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-30 reads as rewritten:

"**§ 97-30. Partial incapacity.**

Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such disability, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more a week than the amount established annually to be effective October 1 as provided in ~~G.S. 97-29 a week, and in no case shall the period covered by such compensation be greater than 300 weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability.~~G.S. 97-29. An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article."

SECTION 2. This act becomes effective October 1, 2005, and applies to injuries that occur on or after that date.

SENATE BILL 865:
Workers' Comp/Employee Work Incentive

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 4, 2005
Introduced by:	Sen. Berger°of°Franklin	**Summary by:**	Walker Reagan Committee Counsel and Dickie Brown
Version:	First Edition		

SUMMARY: ***Senate Bill 865 would create an incentive for partially incapacitated employees to return to work by eliminating the 300-week maximum for which partially disabled employees may receive Workers' Compensation benefits.***

CURRENT LAW: G.S. 97-30 states that when an employee is partially incapacitated due to an injury covered by Workers' Compensation, the employer shall pay the employee a weekly compensation of sixty-six and two thirds percent (66 2/3%) of the difference between the employee's average weekly wages and what the employee is able to earn after the injury, but not more that the maximum weekly limit established annually and not more than for 300 weeks following the injury. If the partial disability follows a period of total disability, the number of weeks for which benefits were paid under total disability shall be subtracted from the 300-week limit.

BILL ANALYSIS: Section 1 of the bill amends G.S. 97-30 to eliminate the 300-week maximum that a person may receive worker's compensation under partial disability.

EFFECTIVE DATE: The bill would become effective October 1, 2005 and would apply to all injuries that occur on or after that date.

§ 97-29. Compensation rates for total incapacity.

Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars ($30.00) per week.

In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State Defense Militia shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars ($30.00) a week as fixed herein.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars ($2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 866

Short Title:	Increase Cap on Loss of Workers' Organ.	(Public)
Sponsors:	Senators Berger of Franklin; Bingham, Boseman, Cowell, Hartsell, Holloman, Kinnaird, Nesbitt, Snow, and Soles.	
Referred to:	Judiciary II.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM AWARD UNDER THE WORKERS' COMPENSATION ACT FOR THE LOSS OR PERMANENT INJURY TO AN IMPORTANT ORGAN OR PART OF THE BODY NOT OTHERWISE ADDRESSED IN THE SCHEDULE OF INJURIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-31(24) reads as rewritten:

"(24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed ~~twenty thousand dollars ($20,000).~~fifty thousand dollars ($50,000)."

SECTION 2. This act is effective when it becomes law and applies to all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved on or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered on or after that date; and all awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded on or after that date.

SENATE BILL 866:
Increase Cap on Loss of Workers' Organ

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 3, 2005
Introduced by:	Sen. Berger of Franklin	**Summary by:**	O. Walker Reagan Committee Counsel and Dickie Brown, Research Assistant
Version:	First Edition		

SUMMARY: ***Senate Bill 866 would increase the maximum award for loss of or permanent injury to an important organ or part of the body from $20,000 to $50,000 under the Workers' Compensation law.***

CURRENT LAW: G.S. 97-31(24) states that any external or internal organ or important body part that is lost or receives permanent injury under circumstances governed by the Workers' Compensation law, that is not payable under any schedule of injuries in the Workers' Compensation law, is entitled to a maximum benefit not to exceed $20,000.

Although not defined in statute, courts have found the following to be organs or body parts for which compensation is otherwise payable: bladder, spleen, lungs, stomach, intestines, pancreas, reproductive organs, loss of sense of smell and taste. This is not an exhaustive list.

BILL ANALYSIS: Section 1 of the bill rewrites G.S. 97-31(24) to increases the maximum amount the Industrial Commission may award for loss or permanent injury to an external or internal organ or important body part from $20,000 to $50,000. This section applies only to those organs or body parts for which no compensation is payable under any other part of G.S. 97-31 (attached).

EFFECTIVE DATE: The bill would become effective when it becomes law and would apply to all North Carolina Industrial Commission agreements, decisions, and awards entered on or after that date.

§ 97-31. Schedule of injuries; rate and period of compensation.

In cases included by the following schedule the compensation in each case shall be paid for disability during the healing period and in addition the disability shall be deemed to continue for the period specified, and shall be in lieu of all other compensation, including disfigurement, to wit:

(1) For the loss of a thumb, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 75 weeks.

(2) For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 45 weeks.

(3) For the loss of a second finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 40 weeks.

(4) For the loss of a third finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 25 weeks.

(5) For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 20 weeks.

(6) The loss of the first phalange of the thumb or any finger shall be considered t be equal to the loss of one half of such thumb or finger, and the compensation shall be for one half of the periods of time above specified.

(7) The loss of more than one phalange shall be considered the loss of the entire finger or thumb: Provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(8) For the loss of a great toe, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 35 weeks.

(9) For the loss of one of the toes other than a great toe, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 10 weeks.

(10) The loss of the first phalange of any toe shall be considered to be equal to the loss of one half of such toe, and the compensation shall be for one half of the periods of time above specified.

(11) The loss of more than one phalange shall be considered as the loss of the entire toe.

(12) For the loss of a hand, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 200 weeks.

(13) For the loss of an arm, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 240 weeks.

(14) For the loss of a foot, sixty-six and two-thirds percent (66 2/3%) of the averag weekly wages during 144 weeks.

(15) For the loss of a leg, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 200 weeks.

(16) For the loss of an eye, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 120 weeks.

(17) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of G.S. 97-29. The employee shall have a vested right in a minimum amount of compensation for the total number of weeks of benefits provided under this section for each member involved. When an employee dies from any cause other than the injury for which he is entitled to compensation, payment of the minimum amount of compensation shall be payable as provided in G.S. 97-37.

(18) For the complete loss of hearing in one ear, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 70 weeks; for the complete loss of hearing in both ears, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 150 weeks.

(19) Total loss of use of a member or loss of vision of an eye shall be considered as equivalent to the loss of such member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye o for partial loss of hearing shall be such proportion of the periods of payment above provided for total loss as such partial loss bears to total loss, except that in cases where there is eighty-five per centum (85%), or more, loss of vision in

any eye, this shall be deemed "industrial blindness" and compensated as for total loss of vision of such eye.

(20) The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maximum and minimum as set out in G.S. 97-29.

(21) In case of serious facial or head disfigurement, the Industrial Commission shall award proper and equitable compensation not to exceed twenty thousand dollars ($20,000). In case of enucleation where an artificial eye cannot be fitted and used, the Industrial Commission may award compensation as for serious facial disfigurement.

(22) In case of serious bodily disfigurement for which no compensation is payable under any other subdivision of this section, but excluding the disfigurement resulting from permanent loss or permanent partial loss of use of any member of the body for which compensation is fixed in the schedule contained in this section, the Industrial Commission may award proper and equitable compensation not to exceed ten thousand dollars ($10,000).

(23) For the total loss of use of the back, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 300 weeks. The compensation for partial loss of use of the back shall be such proportion of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases where there is seventy-five per centum (75%) or more loss of use of the back, in which event the injured employee shall be deemed to have suffered "total industrial disability" and compensated as for total loss of use of the back.

(24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed twenty thousand dollars ($20,000).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 969

Short Title:	Amend Workers' Comp. Act -3.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Rules and Operations of the Senate.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING WORKERS' COMPENSATION.

The General Assembly of North Carolina enacts:

SECTION 1. The law regarding workers' compensation in North Carolina is amended.

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

SENATE BILL 969:
Amend Workers' Comp. Act -3

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 2, 2005
Introduced by:	Sen. Berger°of°Franklin	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 969 amends the Workers Compensation Act to provide that in cases of total and permanent incapacity, the amount paid to the injured employee will be adjusted annually to reflect the change in cost of living. The Commission is authorized to determine the cost of living adjustment. The adjustment which would be effective July 1 of each year.***

CURRENT LAW: Current law provides that an employee is entitled to receive 66and 2/3 percent of his or her average weekly wage for total disability. If the disability is permanent, the compensation is paid for the lifetime of the employee.

EFFECTIVE DATE: Senate Bill 969 is effective January 1, 2006 and applies to agreements, orders, decisions, and awards entered on or after that date.

S0969e1-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 969
PROPOSED COMMITTEE SUBSTITUTE S969-CSLD-5 [v.1]

4/26/2005 4:15:54 PM

Short Title: Total & Permanent Disability/Adjust Comp. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ANNUAL AUTOMATIC ADJUSTMENTS OF COMPENSATION FOR TOTAL AND PERMANENT DISABILITY UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-29 reads as rewritten:

"**§ 97-29. Compensation rates for total incapacity.**

(a) Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars ($30.00) per week.

(b) In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

(c) In cases of total and permanent disability, the amount paid to the injured employee under subsection (a) of this section shall be adjusted annually to reflect the change in the cost of living for the preceding calendar year. The Commission shall determine the annual cost of living adjustment. The cost-of-living adjustment under this subsection shall be effective July 1 of each year.

(d) The weekly compensation payment for members of the North Carolina national guard and the North Carolina State Defense Militia shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars ($30.00) a week as fixed herein.

(e) An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

(f) Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars ($2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided."

SECTION 2. This act becomes effective January 1, 2006 and applies to all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes that are approved on or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered on or after that date; and all awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1112

Short Title:	Amend Workers' Comp. Act -2.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Rules and Operations of the Senate.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING WORKERS' COMPENSATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended.

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

SENATE BILL 1112:
Amend Workers' Comp. Act -2

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 2, 2005
Introduced by:	Sen. Berger°of°Franklin	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: Senate Bill 1112 would require the Industrial Commission to notify an injured employee in writing of the employee's right to select a physician of his or her own choosing upon the approval of the Commission.

CURRENT LAW: Under current law, if the employer denies liability or fails to provide treatment, in the case of an emergency, or upon the approval of the Commission, the employee is entitled to select the physician or hospital of his or her own choosing. The employee must seek prompt approval of the health care provider by the Commission.

EFFECTIVE DATE: Senate Bill 1112 is effective when it becomes law and applies to injuries occurring on or after that date.

S1112e1-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1112
PROPOSED COMMITTEE SUBSTITUTE S1112-CSLD-6 [v.1]

4/27/2005 2:22:22 PM

Short Title: Workers' Comp./Choice of Physician. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO HONOR THE PATIENT'S CHOICE OF A PHYSICIAN WHEN THE PATIENT IS AN EMPLOYEE ENTITLED TO COMPENSATION UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

~~Provided, however, if he so desires, an~~An injured employee may select a physician of his or her own choosing to attend, ~~prescribe~~ subscribe, and assume the care and charge of his ~~case, subject to the approval of the Industrial Commission.~~or her case, at the insurer's expense, and the Commission shall so notify the employee in a timely manner in writing on a form developed by the Commission."

SECTION 2. This act is effective when it becomes law and applies to any injury as defined by G.S. 97-2 that occurs on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1151

Short Title:	Amend Workers' Comp. Act -1.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Rules and Operations of the Senate.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended.

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

SENATE BILL 1151:
Amend Workers' Comp. Act -1

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 2, 2005
Introduced by:	Sen. Berger°of°Franklin	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: Senate Bill 1151 adds language requiring an employer to accept or deny an employee's claim for compensation or initiate payments without prejudice under the Workers Compensation Act within 14 days of receiving actual or written notice of a claim under the Act.

CURRENT LAW: Current law requires an employer to admit or deny a claim within fourteen days of written or actual notice of the claim. An employer is also given the option of making payments without prejudice for 90 days while investigating the claim.

BILL ANALYSIS: Senate Bill 1151 adds language requiring an employer to accept or deny an employee's claim for compensation or initiate payments without prejudice under the Workers Compensation Act within 14 days of receiving actual or written notice of a claim under the Act.

If an employer accepts the claim, payments must be paid no later than the fourteenth day after the employer receives written or actual notice of the injury or death of an employee. Current law provides that these payments are due on the fourteenth day after written notice of the claim.

An employer who chooses to initiate payments without prejudice while determining whether to admit or deny the claim must begin payments no later than the fourteenth day after the employer has written or actual notice of the injury.

In addition, as soon as the Commission receives a written claim for compensation, the Commission must monitor the claim to determine if the employer is complying with the provisions of this section, including time limits, of this section. The Commission is required to submit an annual report to the General Assembly detailing compliance with this section by employers.

EFFECTIVE DATE: Senate Bill 1151 becomes effective January 1, 2006 and applies to injuries occurring on or after that date.

S1151e1-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1151
PROPOSED COMMITTEE SUBSTITUTE S1151-CSLD-7 [v.1]

4/27/2005 2:30:53 PM

Short Title: Expedite Payment of Workers' Compensation. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE PROMPT PAYMENT OF COMPENSATION UNDER THE WORKERS' COMPENSATION ACT AND TO REQUIRE THE NORTH CAROLINA INDUSTRIAL COMMISSION TO MONITOR WHETHER EMPLOYERS ARE PROMPTLY INITIATING PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-18 reads as rewritten:

"**§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.**

(a) Compensation under this ~~Article~~ Article, including medical compensation, shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided. Within 14 business days of receiving written or actual notice of a claim under this Article, an employer shall do one of the following:

(1) Accept the employee's claim or admit the employee's right to compensation and satisfy the requirements under subsection (b) of this section.

(2) Deny the employee's right to compensation and satisfy the requirements regarding denial of compensation under subsection (c) of this section.

(3) Initiate compensation payments without prejudice and without admitting liability and satisfy the requirements of subsection (d) of this section.

(a1) As soon as the Commission receives a written claim for compensation, the Commission shall monitor the claim in order to determine whether employers are initiating compensation payments promptly and otherwise complying with this section. The Commission shall develop compliance measures and a process of monitoring claims in accordance with this section. No later than March 1 of each year, the Commission shall submit an annual report to the General Assembly detailing its efforts

to ensure compliance by employers and detailing the level of compliance by employers in satisfying the requirements of this section. The Commission may make recommendations to the General Assembly on how to further improve compliance.

(b) When the employer admits the employee's right to ~~compensation,~~compensation or when the employer accepts the employee's claim, the first installment of compensation payable by the employer shall ~~become due on~~ be paid no later than by the fourteenth day after the employer has written or actual notice of the injury or ~~death, on which date all compensation then due shall be paid.~~death. Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced. This information contained in this notice of payment constitutes admissions by the employer.

(c) If the employer denies the employee's right to compensation, the employer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, and advise the employee in writing of its refusal to pay compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may initiate compensation payments without prejudice and without admitting liability. The initial payment shall be paid no later than by the fourteenth day after the employer has written or actual notice of the injury and shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify

the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

(d1) The provisions of subdivision (d) of this section apply to the employer's payment of medical compensation without prejudice.

(e) The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due 10 days from the day following expiration of the time for appeal from the award or judgment or the day after notice waiving the right of appeal by all parties has been received by the Commission, whichever is sooner. Thereafter compensation shall be paid in installments weekly, except where the Commission determines that payment in installments shall be made monthly or in some other manner.

(f) The employer's or insurer's grounds for contesting the employee's claim or its liability therefor as specified in the notice suspending compensation under subsection (d) of this section are the only bases for the employer's or insurer's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered material evidence that could not reasonably have been discovered prior to the notice suspending compensation.

(g) If any installment of compensation is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(h) Within 16 days after final payment of compensation has been made, the employer shall send to the Commission and the employee a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer a civil penalty in the amount of twenty-five dollars ($25.00). The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) If any bill for services rendered under G.S. 97-25 by any provider of health care is not paid within 60 days after it has been approved by the Commission and returned to the responsible party, or within 60 days after it was properly submitted, in accordance with the provisions of this Article, to an insurer or managed care organization responsible for direct reimbursement pursuant to G.S. 97-26(g), there shall be added to such unpaid bill an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such medical bill, unless such late payment is excused by the Commission."

SECTION 2. This act becomes effective January 1, 2006 and applies to injuries that occur on or after that date.

ATTACHMENT C

Most states provide for an injured worker to receive medical and compensation benefits for an injury that is the unexpected result of the routine performance of job duties.

Currently, North Carolina is in a minority of states that require that the cause of the injury be unexpected with the sole exception being an injury to the back.

This proposed change would treat the extremities: i.e., the shoulder and knee the same as the back.

Index

1. Senate Bill 864

2. Larson's discussion of the concept of the "injury by accident" issue.

3. **Calderwood v. The Charlotte-Mecklenburg Hospital Authority**

   This case involves a nurse who sustained a rotator cuff tear to her shoulder while helping a patient deliver a baby. She had to litigate the case all the way to the Court of Appeals because her employer said her injury was the result of the routine performance of her job.

4. **Frye v. Town of Maiden**

   This case involves a volunteer fireman who sustained a meniscus tear to his knee. He had to litigate his case without an attorney before the Industrial Commission. The employer denied his claim because it said his injury was the result of the routine performance of his job.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 864

Short Title:	Workers' Comp/Injury to Extremities.	(Public)
Sponsors:	Senators Berger of Franklin; Boseman, Cowell, Holloman, Kinnaird, Nesbitt, Snow, and Soles.	
Referred to:	Judiciary II.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW COMPENSATION UNDER THE WORKERS' COMPENSATION ACT FOR INJURIES OF THE EXTREMITIES OF THE BODY OF THE EMPLOYEE WHERE THE INJURY ARISES OUT OF AND IN THE COURSE OF EMPLOYMENT AND IS THE DIRECT RESULT OF A SPECIFIC TRAUMATIC INCIDENT OF THE WORK ASSIGNED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-2(6) reads as rewritten:

"(6) Injury. – "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident. With respect to ~~back injuries,~~injuries to the back or extremities of the body, however, where the injury ~~to the back~~ arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, "injury by accident" shall be construed to include any disabling physical injury to the ~~back~~back or extremities of the body arising out of and causally related to such incident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices ~~which~~ that function as part of the body; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for unless injury to them is incidental to a compensable injury."

SECTION 2. This act is effective when it becomes law and applies to all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved on or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered on or after that date; and all

awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded on or after that date.

CHAPTER 43

INJURY FROM USUAL EXERTION OR EXPOSURE: THE FOUR APPROACHES

HOW TO USE THIS PUBLICATION

A dagger sign (†) has been placed in selected footnotes to indicate that (1) the case has been summarized by the author, or (2) there is a list of citations by jurisdiction. To find the case summary or list of citations by jurisdiction, go to the "Digest" section at the end of the volume and find the corresponding chapter, section, and footnote number.

SCOPE

The "by accident" requirement is now deemed satisfied in most jurisdictions either if the cause was of an accidental character or if the effect was the unexpected result of routine performance of the claimant's duties. Accordingly, if the strain of claimant's usual exertions causes collapse from heart weakness, back weakness, hernia, and the like, the injury is held accidental. A very substantial minority of jurisdictions require a showing that the exertion was in some way unusual, or make other reservations.

§ 43.01 Accidental Cause Versus Accidental Result

The typical fact situation in exertion cases has already been described: Claimant's duties for years have required the lifting of heavy sacks onto a platform. One day, while lifting a sack of the usual size, claimant suddenly experiences a severe pain. Medical testimony establishes that the claimant had a weak heart, and that the strain of lifting precipitated the collapse of the heart.

The only question here under consideration is whether the collapse is "by accident." Note that, under the facts as given, the injury arose in the course of and out of the employment, since, as shown in an earlier section, it is sufficient in practically all jurisdictions to prove that the employment precipitated the disabling injury, even if the employee had a contributing preexisting weakness.[1]

Well before any American states copied the "injury by accident" terminology of the British act, it was settled beyond question in England that such a claim was compensable, on the theory that, although the cause was routine and not accidental, the effect on the employee was unexpected and catastrophic, and therefore accidental. The exact situation was passed upon by the House of Lords in 1903[2] and again in 1910.[3] In the latter case, the routine exertion of tightening a nut caused an aneurysm to break, and this was held to be injury by accident. In February 1912, Professor Bohlen wrote an article which was widely read as a guide to drafting of compensation acts, pointing out these cases as establishing the authoritative meaning of the phrase.[4] Yet, in spite of the well-settled doctrine that

a legislature, in adopting a statute which has already been authoritatively construed, is deemed to have adopted the construction,[5] a long battle has been fought in the United States on this exact issue, and is still being fought.

The issue here, in theoretical terms, is whether a court in construing "by accident" will require an accidental cause or will be satisfied with an accidental result. In practical terms, the issue is whether injury is accidental when it is the unexpected consequence of the usual exertion or exposure of the particular employee's job: A truck driver's routine heavy lift produces a hernia; a freight loader accustomed to handling heavy boxes suffers a cerebral hemorrhage while lifting a normal-sized box; a police officer runs after a fugitive and has a coronary thrombosis; a firefighter becomes encased in ice while fighting a fire in winter and dies of pneumonia.

As a matter of theory, it might be thought that each jurisdiction would take its stand on this cause-result issue, so that one could make up a neat list saying: The following jurisdictions accept as accidental any routine exertion or exposure leading to unexpected harm, and the following do not, and therefore the one or the other is the majority rule. Unfortunately this cannot be done. The reason is that the two parts of the accident concept—unexpectedness and definiteness—do not in practice seem to remain distinct. Logical or not, a usual exertion leading to a clean-cut result such as a rupture may be held accidental while an identical usual exertion leading to some more generalized result such as "heart failure" may not.[6] Similarly, a usual exposure causing sunstroke or freezing may be held accidental while an identical usual exposure leading to pneumonia may not. The preponderance of the authorities on whether the effects of the usual conditions of employment can be considered accidental varies according to the definiteness of the harm produced.

The lines of cases, arranged according to this principle, fall into four principal categories, consisting of two "exertion" categories—"breakage" cases and "generalized condition" cases, and two "exposure" categories—"freezing and sunstroke" cases, and "diseases of exposure" cases. The weight of authority varies noticeably from one to the other.

NO. COA98-1033

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 1999

ROZANNE CALDERWOOD,

Employee,

Plaintiff;

v.

THE CHARLOTTE-MECKLENBURG

HOSPITAL AUTHORITY,

Employer;

TRIGON ADMINISTRATORS,

Carrier,

Defendants

North Carolina Industrial Commission
I.C. File No. 587666

Appeal by plaintiff from Opinion and Award filed 26 March 1998 by the North Carolina Industrial Commission. Heard in the Court of Appeals 17 August 1999.

Cecil R. Jenkins, Jr. for plaintiff-appellant.

Morris, York, Williams, Surles & Barringer, L.L.P., by Anna L. Baird, for defendant-appellees.

GREENE, Judge.

Rozanne Calderwood (Plaintiff) appeals from the Opinion and Award of the North Carolina Industrial Commission (Commission) in favor of The Charlotte-Mecklenburg Hospital Authority (Defendant-Hospital) and Trigon Administrators (Defendant-Carrier).

On 2 October 1995, Plaintiff worked for Defendant-Hospital as a Staff II Nurse in Labor and Delivery. She had worked there for eleven years prior to October 1995. Plaintiff's work duties included monitoring labor patients, circulating patients for deliveries and C-sections, recovery room care, and care of newborns. Plaintiff testified that at about 12:30 p.m. on 2 October 1995, she admitted a patient for labor induction. Dr. Newman, M.D. (Dr. Newman) ordered an epidural for the patient and Wes Robinson, M.D. (Dr. Robinson) administered the epidural. The patient remained uncomfortable after the epidural, so Dr. Robinson rebolused the epidural two or three times and gave the patient I.V. Stadol for pain.

At 4:30 p.m., Dr. Newman advised Plaintiff the patient was ready to start pushing; however, the epidural had caused a total block. In other words, the patient was unable to move her legs and consequently was unable to assist in the delivery. To assist the patient in her delivery Plaintiff lifted the patient's right leg with her left hand, until the patient was able to grab behind her thigh, and conducted perineal massage using her right hand. Plaintiff repeated this procedure during contractions for thirty minutes. The patient's husband lifted her left leg.

Plaintiff testified that her work frequently required her to assist patients in delivery and this sometimes involved assisting patients in the lifting of their legs. She stated, however, in this case the patient's leg was unusually heavy because the patient was five feet, three inches tall, and weighed 263 pounds. In addition, this delivery was unusual because the patient could not assist with lifting her legs. Plaintiff testified this delivery was the first time she had, with this employer, been responsible for lifting the leg (s) of a patient during a delivery without receiving any assistance from the patient.

In the evening after the 2 October delivery, Plaintiff noticed an ache in her left shoulder, and two days later she reported this to her supervisor. On 17 January 1996, Plaintiff underwent arthroscopic surgery which revealed a partial thickness tear in her left rotator cuff. She has not returned to work for Defendant-Hospital or any other employer since the surgery.

Denise White (White), Plaintiff's supervisor and the nurse manager for obstetrical and neonatal services at Defendant-Hospital, testified that about 75 percent of labor and delivery patients at Defendant-Hospital receive an epidural, and about 80 percent of the patients deliver vaginally. She further stated the range of patients in labor and delivery vary from "[v]ery young, very old, very small, very large." The desired effect of an epidural "is that [the] patient to be able to have relief for the pain but yet still feel some pressure so they can push." While patients do not usually have a total block, a total block "can occur," although White could not state "how often that occurs." She further stated "a patient may have a very heavy epidural where they have heavy legs," and lifting a patient's legs during delivery is a "job expectation."

White testified concerning the events that took place on 2 October 1995, as follows:

Q: Have - the events that [Plaintiff] described on October 2nd, 1995, are those typical events within the usual course and scope of this employment or was there something unusual?

A: All of the things that she described could happen during the course of labor and delivery, the pushing, the epidural with the heavy block versus a light block. Those are all things that could happen within the course of the interpartum period. Like I said, that's a very varied - it's hard to give a normal or typical, but those are all things that could happen during labor.

The Commission made the following pertinent findings of fact and conclusions of law:

Findings of Fact

13. . . . Plaintiff's injury occurred while performing her usual employment duties in the usual way. . . .

14. While [P]laintiff did suffer some bodily injury on October 2, 1995, the injury was not a result of any unforeseen or unusual event and is therefore not a compensable injury by accident.

Conclusions of Law

1. On October 2, 1995, the [P]laintiff sustained an injury on the job that was not an injury by accident . . . .

2. Plaintiff's work related injury is not compensable.

3. Plaintiff, not having carried her burden of proving an injury by accident and resulting disability, is not entitled to compensation under the Workers' Compensation Act.

The Commission therefore denied Plaintiff's claim for compensation.

The dispositive issue on appeal is whether there is competent evidence in this record to support the finding that Plaintiff's injuries "occurred while performing her usual employment duties in the usual way."

Under the North Carolina Workers' Compensation Act, an injury arising out of and in the course of employment is compensable only if it is caused by an "accident," and the claimant bears the burden of proving an accident has occurred. *See* N.C. Gen. Stat. §972 (6) (Supp. 1998); *Morrison v. Burlington Industries*, 304 N.C. 1, 13, 282 S.E.2d 458, 467 (1981) (claimant has the burden of showing an injury arising from an accident during the scope of employment has occurred). An accident is "an unlooked for and untoward event which is not expected or designed by the person who suffers the injury." *Adams v. Burlington Industries*, 61 N.C. App. 258, 260, 300 S.E.2d 455, 456 (1983) (citations omitted). An accident therefore involves "the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences." *Id.*

"In an appeal from a decision by the Industrial Commission, the scope of review is limited to a determination of whether the Commission's findings of fact are supported by competent evidence and whether the conclusions of law are supported by the findings." *Hemric v. Manufacturing Co.*, 54 N.C. App. 314, 316, 283 S.E.2d 436, 437-38 (1981), *disc. review denied*, 304 N.C. 726, 288 S.E.2d 806 (1982). This Court therefore is bound by findings of fact based on competent evidence "even though the record contains evidence that would support contrary findings." *Smith v. Burlington Industries*, 35 N.C. App. 105, 106-07, 239 S.E.2d 845, 846 (1978). The Commission's findings of fact may be set aside, however, when "there is a complete lack of competent evidence to support them." *Click v. Freight Carriers,* 300 N.C. 164, 166, 265 S.E.2d 389, 390 (1980).

In this case, there is a complete lack of competent evidence to support the findings that Plaintiff's injuries "occurred while performing her usual employment duties in the usual way," and were "not a result of any unforeseen or unusual event." The undisputed evidence is that Plaintiff had never in her eleven years of work with Defendant-Hospital assisted a patient in child delivery where she was required, without any assistance from the patient, to lift the leg(s) of the patient, especially a patient weighing 263 pounds. The fact that her job responsibilities did include assisting patients who received epidurals resulting in a total block is not dispositive. The question is whether her regular work routine required lifting the legs of women weighing 263 pounds who had received epidurals resulting in total blocks, *see Gladson v. Piedmont Stores*, 57 N.C. App. 579, 580, 292 S.E.2d 18, 19 (1982) (injury caused by interruption of employee's "regular work routine" constitutes accident); *Gabriel v. Newton*, 227 N.C. 314, 317-18, 42 S.E.2d 96, 98 (1947) (injury caused by overexertion constitutes accident), and there is no evidence that it did. Accordingly, the Opinion and Award of the Commission is reversed.

Reversed and remanded.

Judges TIMMONS-GOODSON and HORTON concur.

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I.C. NO. 331218, DAVID FRYE, Employee, Plaintiff v. TOWN OF MAIDEN, Employer, NORTH CAROLINA LEAGUE OF MUNICIPALITIES, Carrier, Defendants. OPINION AND AWARD by DOUGLAS E. BERGER, Deputy Commissioner, N.C. Industrial Commission. Filed 14 April 2004.

This case was heard before the undersigned in Hickory on September 15, 2003. Prior to the hearing, the parties entered into a Pre-Trial Agreement. This Pre-Trial Agreement is incorporated herein by reference. Following the hearing, the record was held open in order to allow the parties to submit written interrogatories to Dr. Campbell and Dr. Peeler. Upon the receipt of the answers to the interrogatories as well as written contentions from each of the parties, the record in this matter was closed on March 12, 2004.

APPEARANCES

Plaintiff: *Pro Se.*

Defendants: McAngus, Goudelock & Courie, Attorneys, Charlotte, North Carolina; Robert Starnes, Counsel of Record.

* * * * * * * * * * *

The undersigned finds as fact and concludes as matters of law the following as:

STIPULATIONS

1. All stipulations contained in the Pre-Trial Agreement are received into evidence.

2. It was stipulated by the parties that this case is subject to the North Carolina's Workers' Compensation Act, and the parties are bound by and subject to the North Carolina Workers' Compensation Act.

3. An employment relationship existed between the Employee-Plaintiff and the Defendant-Employer, Town of Maiden, who was insured by the North Carolina League of Municipalities at the time of the injuries on May 14, 2003, relevant to this claim.

4. Employee-plaintiff was employed with the Town of Maiden as a volunteer fireman on the date of the alleged accident. However, he had been laid off from his principal place of employment. Therefore, pursuant to N.C. Gen. Stat. §§97-2(5) and 97-29, Employee-Plaintiff's average weekly wage is $451.11 (2/3 of the maximum weekly benefit, $674.00 for 2003)

5. An indexed set of records was marked as stipulated exhibit 1 and received into evidence.

6. Interrogatory responses by Dr. Peeler were marked as stipulated exhibit 2 and received into evidence.

7. Interrogatory responses by Dr. Campbell were marked as stipulated exhibit 3 and received into

evidence.

Additional Exhibits

1. A May 15, 2003 recorded interview was marked as defendant's exhibit 1 and received into evidence.

* * * * * * * * * * *

Based upon all of the competent evidence adduced from the record, the undersigned makes the following additional

FINDINGS OF FACT

1. At the time of the hearing, plaintiff was a fifty-one year old male who had served as a volunteer fireman for the town of Maiden for twenty-three years.

2. On May 14, 2003, plaintiff jumped down from a fire truck into a flexed position and experienced a sudden pop as well as pain in his right knee.

3. Plaintiff missed the handrail that he usually used to guide him and landed all of his weight on his right knee.

4. As a result of the plaintiff's failure to hold the handrail when he jumped down from the fire truck on May 14, 2003, plaintiff sustained a medial meniscus tear and an osteochondral defect of the medial femoral condyle in his right knee.

5. As a result of the plaintiff's failure to hold the handrail when he jumped down from the fire truck on May 14, 2003, plaintiff underwent arthroscopic surgery for his right knee on July 3, 2003. This surgery was reasonably necessary to relieve the plaintiff's pain, lessen his disability and/or effect a cure.

6. At the time that plaintiff was injured on May 14, 2003 he was unemployed. Following his May 14, 2003 injury, plaintiff had elected not to search for employment. Plaintiff was not medically restricted from searching for employment. At the time of the hearing, plaintiff had made plans to participate in a two-year training program beginning in January 2004.

7. Based upon the undersigned's observation of the plaintiff's demeanor and the intonation of his voice as well as his twenty-three year period of service as a volunteer fireman, the undersigned finds plaintiff's testimony that he missed the handrail as credible. The undersigned is convinced that at the time of the hearing, the plaintiff was unaware of the legal significance of this fact in determining whether an accident had occurred.

8. The set of circumstances whereby plaintiff injured his right knee when he missed the handrail jumping from the fire truck on May 14, 2003 constitutes an interruption of the plaintiff's regular work routine and the introduction of an unlooked for and untoward event which was not expected or designed by the plaintiff

* * * * * * * * * * *

Based upon the foregoing stipulations and findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. On May 14, 2003, plaintiff sustained an injury by accident arising out of and in the course of his employment with defendant-employer whereby he sustained a right knee injury in the work assigned. N.C. Gen. Stat. §97-2(6).

2. Plaintiff is entitled to have the defendants provide all medical treatment arising from this injury to the extent it tends or tended to effect a cure, give relief or lessen plaintiff's disability. N.C. Gen. Stat. §97-25.

3. Plaintiff is entitled to receive permanent partial disability compensation, if any, for his right knee at a compensation rate of $451.58. N.C. Gen. Stat. §97-31.

* * * * * * * * * * *

Based upon the foregoing findings of fact and conclusions of law, the undersigned enters the following:

AWARD

1. Defendants shall pay all medical expenses incurred or to be incurred for the treatment of plaintiff's right knee including the arthroscopic surgery performed by Dr. Campbell.

2. Plaintiff's claim for permanent partial disability to his right knee, if any, is HEREBY RESERVED.

3. Defendants shall pay the costs.

* * * * * * * * * * *

IT IS FURTHER ORDERED that this case shall be REMOVED from the Newton docket.

S/__

DOUGLAS E. BERGER

DEPUTY COMMISSIONER

DEB: sm

Code: 123

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Claimant Fraud: Problems with Developing Prosecutable Claims

By Douglas E. Berger
Former Deputy Commissioner
N.C. Industrial Commission

I. Introduction

"The real question is not why there is so much claimant fraud, but why is there so little." This question was recently raised in an article in the March 1999 issue of *Trial* magazine entitled "Workers' Comp Fraud: the real story." The article cites numerous studies that have been completed of different states' efforts in prosecuting claimant fraud. These studies show a consistent pattern in that the ratio between reports of suspected fraud and actual criminal convictions continues to be extremely low. For example in 1996, 18 cases of 4077 claimant fraud cases investigated in the state of Texas were referred for criminal prosecution. Also in 1996, only 11 cases of 152 complaints of claimant fraud in the State of Wisconsin, were referred for criminal prosecution. According to the article, a 1997 study by the Wisconsin Division of Workers' Compensation Fraud concluded that "there is no...evidence that criminally prosecutable fraud is more than 1 percent of all reported claims in Wisconsin-a far cry from the 20-30 percent estimates thrown about elsewhere." At an anti-fraud conference in San Francisco in November of 1998, and much to the chagrin of insurance company representatives, Mayor Willie Brown announced that anti-fraud efforts in the State of California had successfully led to the end of claimant fraud and it was now time to emphasize prosecution of employer fraud. The article from *Trial* magazine echoes Brown's statements by concluding that greater efforts need to be directed at investigating employer and provider fraud.

Our own experience in North Carolina is consistent with other states in that the ratio between reports of suspected fraud and actual criminal convictions remains low.

The North Carolina Industrial Commission's Fraud Investigations Unit received 87 complaints in 1996, 303 complaints in 1997 and 315 complaints in 1998. Of these 705 cases, four cases have resulted in criminal convictions of claimant fraud, two cases have resulted in admissions of guilt and prayer for judgment continued in claimant fraud cases, and one claimant fraud case resulted in a dismissal in exchange for payment of restitution.

Low conviction rates should not be interpreted as evidence that there is not a serious problem with claimant fraud. Even if only 1 percent of all work related claims involve claimant fraud then there would have been over 2360 cases in North Carolina during the time period that the Fraud Investigations Unit has been in existence. (There were 86,333 claims made in fiscal year 1996-1997, 74,476 claims in fiscal year 1997-1998, and 75,026 claims projected in fiscal year 1998-1999.) This paper seeks to address the problems with developing prosecutable claimant fraud cases in North Carolina.

II. Problems Prosecuting Claimant Fraud Involving the Receipt of Benefits While Working

A. Proof of Earnings

The most commonly prosecuted type of claimant fraud across the country involves the receipt of benefits while working. A straightforward development of this type of fraud case would include both a written statement by the claimant that he or she is not earning wages during a specified time period and wage records showing that the claimant received earnings during that time period. In three years of operation, we have not received or been able to develop a single case with this type of evidence!

One reason that there are so few prosecutable cases of claimant fraud is that the claimant will perform work in the underground economy where no records are maintained. Most of the fraud cases that we receive from employers and carriers involving working and receiving benefits will be developed to the extent that a videotape is available that shows the claimant engaging in work activities. There are usually no wage records or employment security records that can establish that the work on the videotape is being performed for compensation. In order to prove that earnings are being received for these work activities, a witness must exist who can testify that the work was done for compensation. A person who is paying a claimant under the table is probably in violation of both federal and state tax laws and has a vested interest along with the claimant to conceal the employer-employee relationship. Sometimes these employers will admit that they have made illegal payments to our investigators in order to avoid

being the subject of a criminal investigation for tax fraud or being charged as an accomplice in assisting the claimant in the commission of workers' compensation fraud. Such cooperation is less likely for a private investigator employed by a private carrier who does not have the ability to charge anyone with a criminal violation. (Our investigators can not charge anyone with a crime, but they do have a state position and a state badge that can sometimes be used to induce cooperation from a reluctant witness.) Other witnesses that can potentially testify whether a person was working for wages are co-workers. Disgruntled ex-spouses and lovers may also be able to testify about what wages, if any, an injured worker has received in the underground economy.

B. Proof of Working: The "It Depends on the Meaning of 'Is' Is Defense"

The Industrial Commission has investigated and referred cases for prosecution where the claimant has made oral representations to either a physician, employer, and/or the carrier that he or she was not working at a time when there is videotaped evidence of the claimant working but there is no evidence of earnings. During the summer of 1998, a workers' compensation fraud case was tried before a Wake County jury that deadlocked seven to five in favor of guilt. An interview with one of the jurors after the trial revealed that some of the jurors did not think that the claimant intentionally made a false statement when he said he could not work at or near a time when he was videotaped operating a bulldozer. The claimant was a self-employed owner of a construction business. The juror explained that some jurors felt that when the claimant made statements about his ability to work that he did not mean that he could not "piddle around" in his own company. Some jurors felt that the claimant meant that he could not return to performing his regular job duties prior to his injury. The claimant had reported to an SBI investigator that he was engaged in trial returns to work during the times that he was videotaped.

In order to successfully prosecute a claimant for a false statement denying having returned to work, a jury will have to be convinced that the claimant's use of words like "work" or "working" include those work activities that the claimant has performed while receiving compensation payments. Examples of the defense known as the "it depends on the definition of what work is" are as follows in cases that we have referred for prosecution:

a. claimant who attempted to recruit a private investigator for the carrier into Amway puts on a defense that she lost money while engaged in Amway activities

b. claimant who sold Avon products at a flea market says that was she making these sales on behalf of her daughter and did not receive income.

c. claimant who provided childcare in her home says that she was doing it for free.

d. claimant in self-employed business says money earned as a result of his work activities were reinvested in his business.

e. claimant doing logging work says he was doing it for a friend for free.

f. claimant who had performed roofing job put on a defense in his workers' compensation claim that he had not been paid yet at the time that he reported he was not working.

C. Proof of a Statement or Representation About Working

A specific reason that the number of prosecutable claimant fraud cases remain low in North Carolina is that there are no statutes or Industrial Commission Rules that place a duty on a claimant to report earnings received for work performed while receiving workers' compensation.

Proof of working for wages and receiving worker's compensation benefits is not sufficient to prove workers' compensation fraud. Even if the hurdle of proving that wages have been received by the claimant, there must be evidence of a false statement or representation of a material fact concerning the earning of those wages. The Investigations Unit commonly receives reports of injured employees working and receiving compensation benefits. Most of these cases have to be closed because there is no evidence of any false statements or false representations in relation to what appears to be "double dipping." Furthermore, our fraud statute does not include language that makes it a crime "by failing to disclose material facts" in order to obtain workers' compensation benefits.(See attachment 1.) Both the welfare and unemployment fraud statutes in North Carolina do contain such language:

N.C. Gen. Stat. §108A-53(a)(19xx)

> Any person whether provider or recipient or person representing himself as such, who knowingly obtains by means of making a willfully false statement or representation or by impersonation or *by failing to disclose material facts* or in any manner not authorized by This Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which that person is not entitled to an amount of four hundred dollars $400.00 or less shall be guilty of a Class I felony... .

N.C. Gen. Stat. §96-18(a)(19xx)

> Any person who makes a false statement or representation knowing it to be false or *knowingly fails to disclose a material fact* to obtain or increase any benefit under this Chapter or under an employment security law of any other state, the federal government, or of a foreign government, either for himself or any other person, shall be guilty of a Class 1 misdemeanor... .

Some states have such language expressly in their workers' compensation fraud statutes. For example the Arkansas workers' compensation statute reads as follows:

Ark. Code Ann. §11-9-106(a)(1)(Michie 19xx)

> Any person or entity who willfully and knowingly makes any material false statement or representation, or who willfully and *knowingly omits or conceals any material information,* or who willfully and knowingly employs any device, scheme or artifice, for the purpose of obtaining any benefit or payment, or for the purpose of defeating or wrongfully increasing or wrongfully decreasing any claim for benefit or payment or obtaining or avoiding workers' compensation coverage or avoiding payment of the proper insurance premium, or who aids and abets for any of said purposes, under this chapter shall be guilty of a Class D felony...

The Full Commission is considering whether to adopt rules establishing a uniform system for a claimant to report earnings so that a carrier or employer may determine what credits, if any, they are entitled or whether benefits can be terminated because the plaintiff has retained wage earning capacity. If an injured employee fails to report earnings on such an earnings report and it is determined that the injured employee did receive wages during the time period covered by the report, then the earnings report would be evidence of a false statement made in order to obtain or deny a benefit.

> Some carriers have on their own initiative put a report of earnings statement on the back of their compensation checks above the area designated for the injured

worker to endorse the check by signature. Federated Mutual Insurance Company has placed the following language on the backs of their checks:

> By endorsing this check, I certify that I have made no false claims or statements or concealed any material facts, and I have not earned or received unreported income from any employment including self-employment, during the time benefits are being claimed. Failure to report employment or income to Federated Insurance may result in civil and/or criminal penalties.

Two of the claimant fraud cases that have been successfully prosecuted involved sworn answers to interrogatory questions submitted to the claimant during the discovery process of the workers' compensation claim. In the case *State v. Greely White*, (98-CR-7127, Rockingham County District Court), video surveillance disclosed that the claimant went to a used car dealership after he left work where he appeared to regularly do maintenance work on vehicles. The owners of the car dealership denied that the claimant had received any compensation for his labor. The claimant was asked the following question:

> **Are you currently able to work more than four hours per day at Mayo Yarns Inc.? If not, please state in your own words why you are unable to work more than 4 hours per day at Mayo Yarns, Inc.?**

The claimant answered as follows:

> *No, I am working light duty but I still have to be on the move a lot doing that job. I have to sit, stand and lay down often because of the pain. After working the four hours I have to go home and lay down because of the pain.*

In the case *State v. Jeffrey Blanton*, (98-CR-5485), videotaped surveillance revealed that the claimant had been roofing a house during the week that he provided the sworn interrogatory answer. The claimant was asked the following:

> **Have you been an employee of any person or company since January 1, 1996? If so, list the name and address of each and every such employer and include the name of your supervisor, your job duties, your hourly wage and the time period you were so employed?**

The claimant answered as follows:

> *No, other than as a subcontractor for the Employer-Defendant, Shar-Dan, Inc.*

The Rhode Island Division of Workers' Compensation in Rhode Island has developed a report of earnings statement that attempts to cover work activities where there is no proof of exchange of consideration. This notice statement is as follows: The claimant must "report any work in any business, even if the business lost money or if profits or income were reinvested or paid to others. If you performed any duties in any business for which you were not paid, you must show a rate of pay of what it would have cost the employer to hire someone to perform the work you did, even if your work was for yourself, a relative, or friend." Under this notice, the employee is asked to complete this section by answering the following question: "Did you perform non-paid work activities during the above period? State "Yes or No." Defense counsel should consider serving similar interrogatories during discovery in the workers' compensation claim before the Industrial Commission.

D. Use of Evidence of Working and Receiving Benefits in the Civil Defense of a Workers' Compensation Claim.

Even if a case can not be presented for criminal prosecution due to an inability to prove a false statement, a carrier and or employer can successfully use evidence of working in order to end or reduce their obligation to make compensation payments. If an injured employee returns to work in the underground economy, the employer and/or carrier may not be able to obtain evidence of actual compensation received. Under such circumstances, a vocational rehabilitation expert should be employed to establish the market value of such labor and whether such labor is available in the competitive marketplace.

III. Problems in Prosecuting Fraud Related to Misrepresentations About Physical Condition

A second broad category of claimant fraud cases that are referred to our Investigations Unit involve fraud related to misrepresentations about one's physical condition. These cases are extremely difficult to prosecute because treating physicians are reluctant to render a medical opinion that one of their patients has misrepresented his physical condition. A physician's testimony is crucial in determining whether statements or representations about one's physical condition are false. The cases are usually referred to the Unit because there is evidence that the claimant has violated medical restrictions imposed by the treating physician. In order to seriously consider prosecuting a case involving a violation of medical restrictions, there must be expert medical testimony from a physician that a claimant has misrepresented his or her physical condition. A number of states such as Massachusetts, Rhode Island, Arkansas, and Nevada provide newsletters that contain factual summaries of the cases that are actually prosecuted. These newsletters rarely include cases that involve this type of fraud alone. This type of fraud appears to be usually handled in the civil context where the standard of proof is not as high as is the case with a criminal prosecution. These cases can sometimes be prosecuted, but they are largely left to the civil context for a determination as to whether the claimant should continue to receive workers' compensation.

A. Physician's Opinions and Surveillance Videotapes

Carriers and/or employers frequently attempt to establish that violations of medical restrictions have taken place through the use of surveillance videotapes. The Investigations Unit is dependent on the carriers and employers to produce such videotapes because the legislature has not allocated resources to pay for undercover surveillance by the Industrial Commission. In the civil context, such evidence is utilized by defense counsel in order to show wage earning capacity and/or for impeachment purposes. Physicians impose restrictions based upon the limitations claimed by the injured employee as well as their own medical expertise. Surveillance videotapes may be presented to a physician for consideration as to whether the restrictions imposed should continue, but more often the videotapes are used to contradict "in court" testimony by the claimant. There are approximately thirty-four cases that have been considered by the Full Commission during the past four years involving the use of videotapes for the purpose of impeaching the claimant or for the purpose of establishing wage earning capacity. Nine of these decisions include findings that establish that the videotapes were reviewed by a physician. An examination of these cases shows some of the factors that make use of a physician's testimony in the criminal prosecution of a malingering case extremely difficult.

1. Videotape evidence of activities presented to an examining physician *ex-parte* by the employer or carrier may not be admissible

In a post *Salaam* decision, *Johnson v. Chicago Bridge and Iron Company*, I.C. No. 734549 (Filed January 21, 1998 by Bunn), the Full Commission struck from the evidentiary record testimony from a treating physician who had reviewed a videotape sent to him *ex parte.* as well as testimony from a non-treating physician who had conducted an independent medical evaluation and had viewed a videotape sent to him *ex parte.* (It is unclear as to whether suppression of testimony in a workers' compensation hearing will also result in suppression of such testimony in the criminal context.) The Full Commission awarded continuing benefits in the case based upon opinions rendered by physicians who had not viewed the videotape.

However in a pre-*Salaam* decision, *Vasillion v. Raleigh BPO Elks*, I.C. No. 944892 (Filed February 3, 1995 by Ward), the Full Commission did not strike from the evidentiary record a treating physician's opinion about the claimant's ability to return to work despite the fact that he had viewed a videotape that had been submitted to him *ex parte* by the carrier. The Commission noted that the claimant was not prejudiced by the viewing of the videotape because the treating physician had opined that his medical opinion about the claimant's ability to return to work was not based upon the videotape, but was instead based upon his own examinations, other medical records and a functional capacity evaluation. The Full Commission did not award continuing total disability compensation benefits to the claimant.

2. Videotape evidence of activities need to clearly establish that violations of medical restrictions have taken place.

In *Lewis v. U.S. Air*, I.C. No. 508683 (Filed July 8, 1998 O&A by Bolch), the claimant had been restricted from returning to work until after he completed back surgery. During this time period, the claimant assisted his wife at a

videostore that she operated. The employer videotaped the claimant and the tape was presented to the treating physician who opined that the claimant was performing activities inconsistent with his representations of his ability to the physician. The employer terminated the claimant worker based upon the claim that the injured worker had engaged in workers' compensation fraud. A review of the medical records included a detailed description of the range of motions demonstrated by the claimant to the physician during the course of treatment. The physical activities on the videotape were consistent with the range of motions the physician had recorded in his medical records. The Full Commission awarded payment of continuing temporary partial disability compensation to the claimant.

In *Lewis v. B.E. & K. Construction Company*, I.C. No. 237012 (Filed January 14, 1997 O&A by Ward), the claimant was videotaped on two consecutive days cutting limbs with a chainsaw after having been released to return to work following back surgery. The claimant's treating physician testified that he had advised the claimant to increase his activities to condition himself for a return to work. The claimant was engaged in activities that he had not been specifically restricted from doing by his treating physician. The Full Commission awarded payment of continuing total disability compensation to the claimant.

In *Gore v. KSI*, I.C. No. 633744 (Filed June 17, 1998 O&A by Bolch), the claimant was videotaped performing various weightlifting and aerobic exercises on two separate occasions during a time period when she was undergoing pain management therapy. One of the claimant's treating physicians opined that while the injured worker's aerobic exercise and weight training activities were overdoing it, he had urged the injured worker to use her arm as much as possible in a normal fashion. The Full Commission awarded payment of continuing total disability compensation to the claimant.

In *Leyva v. Sampson Gin Company*, I.C. No. 316478 (Filed April 23, 1998 O&A by Scott), the claimant was restricted from standing more than two hours a day, not use his feet for repetitive movement, only bend and reach occasionally, and not to squat, kneel or climb. The claimant was videotaped during a two month period performing several physical activities, including standing, walking, kneeling, and squatting. His treating physician reviewed the videotape and opined that he saw nothing on the videotape which changed his opinions about the claimant's restrictions or capabilities. The Full Commission awarded continuing total disability compensation to the claimant.

However, in *Mishak v. Williams Electric Company*, I.C. No. 029310 (Filed September 25, 1995 O&A by Mavretic), the claimant's treating physician opined that there was a great discrepancy between the claimant's office examination and what the claimant was doing on a videotape. The Full Commission did not award continuing total disability compensation to the claimant.

Also, in *Hastings v. North South Textile Enterprise*, I.C. No. 281458 (Filed May 1996 O&A by Ward), the claimant's treating physician opined that activities depicted on a videotape did not show pain behavior that he had seen when he had examined the claimant in his office. The Full Commission did not award continuing total disability compensation to the claimant.

3. Videotaped evidence of activities will usually need to show prolonged ability to engage in a particular activity.

In *Hashemi v. Winn Dixie Inc.*, I.C. No. 2714209 (Filed October 31, 1996 O&A by Bunn), the claimant was videotaped on two separate occasions engaged in physical activities such as stooping, reaching and kneeling while coaching his daughter's soccer games. The claimant's treating physician opined that it would not be unusual for the claimant to be bedridden for a couple of days after engaging in such activity. In an answer to an interrogatory question, the claimant responded that he could not climb, balance, stoop, kneel, crouch reach, handle, (lift) without pain. The claimant testified that he was bedridden following these episodes and the Full Commission made findings consistent with this testimony. The Full Commission awarded continuing total compensation to the claimant.

* * * * * * * * * * *

In order to establish that an injured worker has misrepresented his abilities to his physician, a combination of some or all of the following factors will likely need to exist before a case can be successfully prosecuted:

1. The physician has an opinion to a reasonable degree of medical certainty that the injured worker was not accurately representing his or her physical abilities at the time that the worker made any statements or representations about his or her abilities.
2. In order that such an opinion will be rendered, there should be a close nexus in time between the statements and representations made to the physician and others and the performance of physical activities inconsistent with such statements and representations.
3. There should also be diagnostic tests that do not corroborate the injured worker's claim of limited physical ability.

Conclusion

The Industrial Commission has only two investigators charged with the responsibility of investigating workers' compensation fraud for the entire state. These investigators are also responsible for the investigation of employer fraud as well as for the investigation of death benefit claims involving law enforcement personnel and firemen. The Unit has no financial resources to conduct surveillance and it has no financial resources to conduct depositions of witnesses as do other states. Despite these limitations, the Unit has investigated eleven cases that have been processed through the criminal justice system and there are fifteen other cases that have been accepted for prosecution. The legislature has appropriated resources for an attorney general whose duties will include advising the unit and enforcing collection of penalties against non-insured employers. Parties interested in the development of prosecutable fraud claims need to have realistic expectations about the type of cases that can be successfully prosecuted. A reform that includes establishing a duty to report earnings and/or work activities will enhance the ability of the Fraud Unit to increase the number of successful claimant fraud prosecutions in the State of North Carolina.

Fraud Convictions

Workers' compensation fraud convictions include:

2002

- **June 11, 2002 in Superior Court of Brunswick County**—Felony Failure to Carry Workers' Compensation Insurance charges were dismissed against Carter Allen in exchange for his making restitution in the amount of $25,136.78. The restitution included $16,476.08 in outstanding medical bills and $5,560.70 in TTD and PPD payments to the injured worker and $3,000 in attorney and penalty fees previously ordered by the Industrial Commission.
  Mr. Allen was the owner of a restaurant employing more than three employees between October 1997 and June 1998 without workers' compensation insurance. An employee sustained an injury in January 1998. Deputy Commissioner Dollar heard the case in June 1999 and issued an order for the payments to the claimant and to the medical providers. Mr. Allen refused to comply. Attempts to contact Mr. Allen were unsuccessful after tracking him to Greensboro, Charlotte, and back to Brunswick County. The case was submitted to the Grand Jury who issued the indictment for Mr. Allen, who had closed his businesses in June of 1998.
- **May 15, 2002 in Superior Court of Robeson County**—Ricky Cromartie entered a plea of guilty to Obtaining Workers' Compensation Benefits by Fraud, misdemeanor. He was given a 45-day sentence in the County jail, suspended, placed on supervised probation for 60 months, and ordered to pay restitution of $22,611.48 to the insurance carrier. Charges against his wife Bernice Cromartie were dropped as part of the plea arrangement.
  Ricky Cromartie had been charged with feloniously obtaining workers' compensation benefits by fraud, and Bernice Cromartie had been charged with feloniously aiding another to obtain workers' compensation benefits by fraud. Ricky Cromartie had received burns when hot grease spilled on him while cooking for a fund raiser for his wife's daycare center in 1998. Two weeks after the accident, they claimed he was an employee and submitted the claim. The investigation revealed that he had a full-time job at a local manufacturing company and that there were no pay records indicating he was an employee of his wife's company. She claimed he was the janitor. Tax records indicated that she was paying a janitorial service at the time.
- **January 29, 2002 in Marion Superior Court**—Floyd J. Davis pled guilty to (F) Obtaining Property By False Pretenses. Judge J. Marlene Hyatt entered the following judgment: 9-11 months in the Department of Correction, suspended; 24 months on supervised probation; pay court costs and $250.00 court- appointed attorney fee; perform 72 hours of community service and pay fee; and intensive probation for six months.
  Mr. Davis had offered two pharmacy receipts for medicines for which he had paid $1.00 each (Medicaid). The receipts had been altered, using a ball point pen, to read $11.00 and $111.00 each, respectively. He also offered for payment a cash register receipt that had been altered to read $122.00, for a workers' compensation claim.

2001

- **September 5, 2001 in Brunswick County Superior Court**—John Thomas Riley entered a plea of no contest to a misdemeanor charge of failing to carry workers' compensation insurance. He was found guilty and given a 45-day sentence, suspended, placed on supervised probation for 36 months and ordered to comply with the Industrial Commission's final order, and maintain workers' compensation insurance coverage for his business.
  He was ordered to pay $2,500 immediately to the injured worker and pay the rest of the money owed through the probation officer. He was given a $500 fine and assessed cost for court.
  Mr. Riley had been charged with the felony of failing to carry workers' compensation insurance. Deputy Commissioner George T. Glenn, II heard the workers' compensation case and issued an Opinion & Award directing Mr. Riley to pay all medical bills incurred by the injured worker, pay temporary total disability (TTD) of $213.34 per week to the injured from September 21, 1998 until the injured returns to work (currently totaling $33,281.04), and assessed penalties of $50 per day from September 21, 1998 until Riley obtains workers' compensation insurance.
- **June 6, 2001 in Halifax County District Court**—Felony criminal charges against a noninsured employer, John Pittman, were dismissed after Mr. Pittman paid the medical bills of and temporary total disability

benefits to an injured employee and a civil penalty to the Industrial Commission. (The employee lost the thumb on his left hand while working for Mr. Pittman.)

After conducting an initial hearing on the injured employee's workers' compensation claim, Deputy Commissioner Chrystal Redding Stanback issued an Opinion and Award, ordering Mr. Pittman to pay the medical bills of and TTD benefits to the injured employee. But Mr. Pittman refused to comply with the Deputy Commissioner's order.

After Mr. Pittman's continued refusal to abide by the O&A of the Industrial Commission, Deputy Commissioner Stanback referred the case to the Commission's Fraud Investigations Section for action. The fraud investigators found that Mr. Pittman had operated a logging and land clearing company, without workers' compensation insurance, from May 27, 1997 until June 30, 1998. The Fraud Investigations Section obtained warrants for felony criminal charges against Mr. Pittman for willful failure to have workers' compensation insurance.

In Halifax County District Court, Mr. Pittman paid a total of $15,630.02 in restitution and civil penalty. That figure includes $8,331.77 paid to medical providers for treatment of the injured employee, TTD benefits of $3,648.25 paid to the injured employee, and a $3,650.00 civil penalty paid to the Industrial Commission.

- **February 1, 2001 in Wake County District Court**—Melvin Luna entered a plea of guilty to misdemeanor larceny, and was sentenced to 45 days in the county jail, sentence suspended, and placed on unsupervised probation for 12 months, ordered to pay restitution of $3809.71 to the injured worker, pay a fine of $100 and court costs. The additional felony counts Mr. Luna had been charged with were dismissed.

  Mr. Luna had been charged with the felonies of forgery and uttering, embezzlement, extortion, obtaining property by false pretense, and workers' compensation fraud. Evidence presented revealed that Mr. Luna had forged an injured workers name on a workers' compensation benefit check in the amount of $3809.71 and deposited the money into his own account. When the injured worker contacted him about the money, Mr. Luna threatened to report the injured worker to immigration as an illegal alien if he did not keep quiet about the check. When contacted by the carrier as to reimbursement to the injured, Mr. Luna said he had the permission of the injured to keep the money because of a debt owed to him by the injured. Evidence uncovered also found that Mr. Luna had been misrepresenting the type of work his company performed to obtain a much lower workers' compensation rate.

2000

- **October 24, 2000 in Person County Superior Court**—Jimmy L. Dew entered a guilty plea to misdemeanor workers' compensation fraud. Mr. Dew was given a 45-day sentence, suspended; placed on 18 months of supervised probation; and ordered to pay a fine of $500, restitution of $6,157, and court costs of $115.

  Mr. Dew was charged with the felony workers' compensation fraud after it was discovered he was working for another company. To keep out of work and to keep receiving his workers' compensation benefits, Mr. Dew had told his doctor that he couldn't walk.

- **August 8, 2000 in Guilford County Superior Court**—William M. Ryan pleaded guilty to two felony charges of Obtaining Property by False Pretenses. The Judge, using the aggravated sentencing guide, sentenced Mr. Ryan to serve two 10-month sentences and then suspended them. Mr. Ryan will be on supervised probation for the 36 months while he is paying restitution. Mr. Ryan also has to pay restitution to CMI (Wal-Mart) of $2,217.54 and to National Benefits America of $4,438.03, plus a fine of $300.00 and court costs.

  Mr. Ryan claimed a workers' compensation injury to his leg when a plastic bag holder was knocked over and struck his right leg. He was a Customer Service Manager at Wal-Mart. He subsequently was videotaped bowling. Investigation disclosed that he has a bowling average of over 260 and regularly can bowl higher games. The treating doctor—when showed the start of the videotape where Mr. Ryan was just walking around and leaning against his car using just his right leg to support himself—said, "He's a malingerer and obviously not hurting like he says."

  While checking records in preparation to writing this case, it was discovered that Mr. Ryan had claimed a new workers' compensation injury. This was a low back injury he sustained as a route salesman while loading trays of bread in a truck. Mr. Ryan was examined by an orthopedic doctor who found no evidence of an injury. The orthopedic doctor referred Mr. Ryan to a neurologist who did not find any neurological cause or any indication of a previous injury for Mr. Ryan's medical complaints. Mr. Ryan was videotaped

holding a baby boy at arms length and doing other things that a person with a back injury would be unable to do.

- **July 26, 2000 in Carteret County District Court**—Lionel Bert Lewis entered a plea of guilty to misdemeanor failure to obtain workers' compensation insurance, a class 1 misdemeanor. He was given a suspended sentence of 45 days, place on 18 months of supervised probation, and ordered to pay restitution of $3,853.75 to an injured employee, and not be convicted of any public assistance fraud.
  Mr. Lewis had been charged with felony failing to obtain workers' compensation insurance. He was the sole proprietor of a business that regularly employed three or more employees and had refused to obtain workers' compensation insurance.
- **June 8, 2000 in Orange County Superior Court**—Kenneth Phillips pleaded guilty to a Class 1 Misdemeanor Workers' Compensation Fraud. He had been charged with a Felony Obtaining Property by False Pretenses for falsifying State travel vouchers and dental records. He also has to pay $1,500 restitution, which he is paying in two payments, $900 June 8 and $600 by the 13th of July. Until that date, he is on supervised probation, but it will be downgraded to unsupervised upon payment of the balance. He will be on unsupervised probation for a year and must pay court costs.
- **April 11, 2000 in Mecklenberg County Superior Court**—Rhonda Wellmon pleaded guilty to two misdemeanor charges of Workers' Compensation Fraud, instead of the five felony charges with which the Grand Jury indicted her.
  Ms.Wellmon had misrepresented her injury and ability to work. She had signed a form generated by the Carrier on August 2, 1998 and in her own handwriting she wrote, "I have been totally disabled and unable to perform any work or physical activity since 3/27/98." On July 8, 9, and 10, 1998, Ms. Wellmon was videotaped painting, using a caulking gun and moving about with any obvious affliction with a painting crew managed by her husband. Her doctor reviewed the videotape and stated in a handwritten response to questions "She appears more active on the videotape than I would expected." and "She does not appear to be in discomfort on the videotape." In response to the question, "If you had been privy to Ms. Wellmon's activities as you observed on the videotape during the period you were treating her, what would have been your findings, your prognosis and what advice would you have given to Ms. Wellmon?" The Doctor's response was, "I probably would have released her without restrictions."
  Ms. Wellmon made restitution of $7,000; has to do 100 hours of community service; and was placed on 90 days supervised probation. The Judge will change her plea to a Prayer for Judgment in 90 days, July 10, 2000, if Ms.Wellmon can provide the court records clearing her from a past criminal violation in Texas. This will be to allow Ms. Wellmon to continue in her profession of accounting which she says she would not be able to do with Felonies on her record.
- **March 29, 2000 in Catawba County District Court**—The Assistant District Attorney dismissed two misdemeanor charges of attempting to obtain workers' compensation benefits against an individual. The cases stemmed from two claims filed three days apart for incidents that occurred six weeks and four weeks, respectively, earlier. The investigation included interviews with the doctor the suspect stated she had seen for treatment who could have testified that he did not treat the suspect for the injuries she was claiming and in fact had not treated her at all for the last incident. Coworkers named by the suspect also contradicted her statements.
  The cases were dismissed because the insurance company had denied the claims and had not paid out any funds. The case had been accepted by a previous Assistant District Attorney who has since been promoted and moved to another county.
- **March 16, 2000 in Wake County Superior Court**—Originally charged with a felony for Obtaining Property by False Pretense, Paul Hallenbeck pleaded guilty to misdemeanor charge of the same offense. He was fined $200 and had to pay $86 court costs, and was given 12 months' probation. He had presented a falsified Certificate of Insurance to successfully obtain a bid on a job. There was no restitution in this case.
- **February 28, 2000 in Danbury Superior Court**—Jack A. Smith pleaded guilty to two charges of misdemeanor larceny instead of one charge of feloniously obtaining property by false pretenses and one misdemeanor charge of attempted workers' compensation fraud. On the first charge, Mr. Smith received 36 months of supervised probation, and 45 days in the county jail which was to be suspended if within 180 days he pays restitution of $3,873.15. He also has to pay a fine of $50, court costs of $91, and community service costs of $100. He additionally has to perform community service for 48 hours within 60 days. On the second charge, which was not consolidated with the first, the sentence was 36 months of supervised probation, which was to run at the expiration of the other sentence.

Mr. Smith had claimed he sustained a back injury while at his place of work, Kobe Copper Products, Inc. Mr. Smith was then videotaped moving out of his trailer home and into a second one. Throughout the moving, he was seen bending, pulling, and lifting things. In particular, Mr. Smith was observed lifting a refrigerator when it got stuck. He was videotaped moving before he had drawn any benefits. He was then terminated by his employer for denying doing any work while his family moved.

- **February 28, 2000 in Wake County District Court**—David Cornejo, aka Jose Villatoro, entered a plea of guilty to a misdemeanor count of Attempting to Obtain Workers' Compensation Benefit Fraud. He was sentenced to 30 days in jail, but the sentence was suspended with the subject being given credit for two days served in jail. He was placed on unsupervised probation for 12 months and fined $50 and court costs of $86.

  The evidence presented revealed that the defendant stated in a sworn interrogatory that he had not worked from the date of the accident, February 15, 1999 until May 21, 1999. The defendant was injured while working as David Cornejo. At the time of the accident, he was receiving unemployment benefits under the name of Jose Villatoro. Evidence was also revealed that he had actually returned to work under the name of Jose Villatoro on March 29, 1999. A referral was made to the Employment Securtity Commission on the unemployment benefits issue on November 4, 1999. No court action has been taken on that issue at this time.
- **February 22, 2000 in Mitchell County District Court**—Randall McKinney entered a plea of responsible to the felony charges of Obtaining Property by False Pretense and Workers' Compensation Fraud in exchange for deferred prosecution. Mr. McKinney owned and operated McKinney Lumber Company. Mr. McKinney denied that an injured Hispanic male was employed by the company when he was injured in July 1998. The evidence shows that Mr. McKinney employed three Hispanic males that he did not report as employees to the insurance company to lessen his workers' compensation rates. Mr. McKinney ultimately admitted the misrepresentation and accepted responsibility for the claim.

  The plea agreement required the payment of a $1,000 fine, $86 court cost, that he maintain workers' compensation coverage, and payment of outstanding medical bills. Mr. McKinney had entered into a compromise agreement with the injured worker after charges were filed and had paid the injured $8,000. Prior to court, he had paid the hospital $1,500. there is an outstanding balance of $13,611 in medical payments still owed. In exchange for the plea, Mr. McKinney has six months to pay the balance of the medical bills during which time he is placed on probation. If he completes his obligation to pay the restitution within six months, he will have the charges dismissed. If he fails to complete the repayment in the time period, the charges will remain on his record and an active sentence will be imposed.
- **February 1, 2000 in Franklin County Superior Court**—Michael Burnette entered a plea of guilty in Franklin County Superior Court to the felony of failing to carry workers' compensation insurance. He was given a suspended sentence of 6-8 months, placed on supervised probation, and ordered to pay restitution of $1,167.88 to Meade Construction. Mr. Burnette had also been charged with felony obtaining property by false pretense, which was dismissed as part of the plea. Mr. Burnette had given a false certificate of insurance to Meade Construction to obtain a subcontract for work. Mr. Burnette had never been insured for workers' compensation.

1999

- **December 10, 1999 in Cumberland County Superior Court**—Germaine Erika Harlan pleaded for a Deferred Prosecution. It was necessary for her to admit her guilt, under oath, to the Judge to her one count of Felony Workers' Compensation Fraud. She made a payment of $6,000.00 on this date and is required to make restitution of an additional $3,328.53 within 18 months. She also has to do 100 hours of community service and pay court costs, and she will be on probation until all restitution is made. She must also stay employed for the 18 months. If she does not have any further problem and pays the restitution, as required, her case will be dismissed.

  An interesting note: Germaine Erika Harlan's mother was in court with her and in fact gave her the $6,000. The Judge was aware that the mother gave the check to the daughter and admonished the young lady in court. He said she should consider it a loan and it is repayable at a later date.
- **November 17, 1999 in Wake County District Court**—Luther Sanders entered a plea of guilty to two counts of failing to carry workers' compensation insurance. The two counts were combined and he was sentenced to 45 days in jail. The sentence was suspended and he was put on supervised probation for three years, ordered to pay a probation fee of $50 for each month, assessed court cost of $86, and ordered to pay restitution of $13,373. Mr. Sanders was charged with two counts each of forging certificates of insurance,

obtaining property by false pretense, and failing to carry workers' compensation insurance. All six counts were charged as felonies. The case was brought to light when an employee was injured and there was no coverage to pay for medical treatment or for TTD (temporary total disability) benefits.

- **November 16, 1999 in Harnett County Superior Court**—Richard Wilbur entered a plea of guilty to felony workers' compensation fraud. He was given a suspended sentence of 6-8 months, 36 months of supervised probation, fined $200 and court costs of $136, and ordered to pay restitution of $4,320.24 to the self-insured employer.
  Mr. Wilber was charged after it was discovered he was working as a volunteer paramedic, responding to emergency calls and lifting patients while telling his employer he was totally disabled and waiting on surgery. The doctor was interviewed pursuant to a court order and said he had never discussed surgery with Mr. Wilber and that Mr. Wilber deserved an Academy Award for his performances.
- **October 11, 1999 in Burke County Superior Court**—Peggy Storie entered a plea of guilty to the felony charge of workers' compensation fraud. She was given a six-month sentence, suspended; placed on supervised probation for five years; and agreed to pay restitution of $10,000 to the carrier plus pay the cost of court. Ms. Storie was represented by counsel.
  The facts of the case were that Ms. Storie reportedly injured her ankle when she slipped on a hash brown while working for Hardees. The unwitnessed injury aggravated an injury from the previous year that occurred at her home. While Ms. Storie was receiving benefits and claiming she could not walk without a cane, she was videotaped keeping children in her home for several families and selling Avon products out of her home and at a local flea market. In an apparent attempt to conceal her earnings from Avon, she had transferred her account with Avon to her daughter's name. Her daughter lives approximately 200 miles away and was never observed at the residence where the product was delivered at Ms. Storie's residence. The payment for the childcare was in cash and not reported.
- **September 15, 1999 in Wake County District Court**—Nathan Brantley and Edward Brantley each entered a plea of guilty to a misdemeanor charge of failing to carry workers' compensation insurance. Each was sentenced to 30 days in jail. The sentence was suspended; and each man was given two years of unsupervised probation, fined $200, and assessed court cost of $86. Each man had been charged with two counts of forging a false certificate of insurance, two counts of obtaining property by false pretense, and failing to carry workers compensation insurance. All five charges on each were felonies.
- **July 29, 1999 in Transylvania County District Court**—Barbara Owen negotiated a plea agreement, pleading down from a felony to a misdemeanor. She received a sentence of 45 days suspended, agreed to pay $12,000 restitution to the insurance carrier and court costs, and will be on supervised probation for five years. Ms. Owen was drawing benefits while working and fabricated letters to the insurance carrier, allegedly from the employer, saying she could not return to work on light duty as there was none.
- **June 28, 1999 in Wilkes County Superior Court**—Rickey Johnson entered pleas of No Contest to charges of perjury and workers' compensation benefits fraud. Mr. Johnson was employed by Lowe's when he reportedly injured his knee in 1994. Evidence presented in the case revealed Mr. Johnson was apparently employed doing auto repair work at a service station in 1995 and 1996 and doing logging work in 1997 while receiving the benefits. No evidence of wages could be obtained, because Mr. Johnson was working for friends and did receive some payment in cash. In a sworn deposition taken in November 1997, Mr. Johnson denied engaging in any work since the accident.
  The Superior Court Judge accepted the pleas and entered a Prayer for Judgment Continued in the case. The judge did not enter any sentence or fine against Mr. Johnson and remitted the cost of court in each case. Lowe's is still pursuing the case civilly against Mr. Johnson to recover damages as a result of the workers' compensation fraud.
- **June 8, 1999 in Currituck County Superior Court**—John Cline entered a plea of guilty to misdemeanor misrepresentation to obtain workers' compensation benefits. Mr. Cline had been charged with the felony of obtaining property by false pretense. He was given a $250 fine, charged cost of court, and placed on unsupervised probation. The facts revealed that the defendant had operated a plumbing business engaged in new residential construction. He had forged several certificates of insurance to obtain the work without having the premiums deducted. There was little evidence of him employing enough workers to have been subject to the Workers' Compensation Act, so no charges were filed on the noninsured issue.
- **May 12, 1999 in Cherokee County District Court**—Joshua David Collins District Court pleaded guilty to a Class 1 Misdemeanor Worker's Compensation Fraud after claiming he was injured on the job while in actuality he had been injured while using a stolen motorcycle on break. He was originally charged with

Felony Fraud; but because the insurance carrier had no loss, the District Attorney agreed to let him plead to the misdemeanor. He did agree to pay the insurer's legal costs of $732.88, court costs, and received 45 days in jail, which was suspended. He is to be on probation for one year.

- **May 6, 1999 in Pitt County Superior Court**—Thomas Spruill entered a plea of guilty to the misdemeanor charge of attempted larceny. He was given a prayer for judgment by the presiding judge. Thomas Spruill and his wife were both charged with the felonies of forgery of a certificate of insurance, obtaining property by false pretense, and failing to carry workers' compensation insurance. All charges were dismissed against his wife, and the charges against Thomas Spruill were dismissed upon his plea of guilty to the lesser charge.
- **April 19, 1999 at a Charlotte Hearing**—Deputy Commissioner W. Bain Jones, Jr. assessed a penalty against T&H Construction for failing to carry workers' compensation insurance. The company had let its workers' comp insurance lapse on May 12, 1997. On February 20, 1998, an employee of the company sustained a work-related injury and subsequently died as a result of the injury. The employer obtained workers' comp insurance on March 7, 1998. Deputy Commissioner Jones assessed a penalty of $50.00 per day for each day the company was not insured pursuant to N.C. Gen. Stat. §97-94, totaling $14,600.00, with the provision that the penalty would be reduced to $5,000.00 if payment was made within 15 days of the order. The penalty of $5,000.00 was paid within the time period.
- **April 6, 1999 in New Hanover County District Court**—Michael Bruce Causey entered a plea of guilty to a misdemeanor charge of failing to carry workers' compensation insurance. Mr. Causey was the sole owner of Container Technologies, a company engaged in the repair of shipping containers for the U.S. Government. In June 1997, an employee reported a work-related injury. At the Industrial Commission hearing, Mr. Causey testified that he had failed to renew his workers' compensation insurance when the policy expired in October 1996. The investigation revealed that the policy had been cancelled in March 1996 for nonpayment of the premium. Records submitted into evidence at the hearing note that Mr. Causey was aware that the policy had been cancelled.
  Mr. Causey received a 45-day sentence. The sentence was suspended and he was placed on probation for 24 months, ordered to pay a $100 fine, pay cost of court, pay restitution to the injured worker as ordered by the Industrial Commission, and maintain workers' compensation insurance on all employees.
- **January 22, 1999**—Deputy Commissioner John A. Hedrick entered an Order in a Penalty Hearing involving J & D Trucking, a noninsured employer involving an injured employee. The Deputy Commissioner found that the employer was subject to the Workers' Compensation Act and failed to secure workers' compensation insurance from April 1, 1993 through May 14, 1997 and found the appropriate penalty under N.C. Gen. Stat. §97-94 to be $75,200.00. The workers' compensation claim had been settled by a compromise agreement prior to the assessment of penalties. Deputy Commissioner Hedrick allowed the employer to satisfy the penalty by payment of $7,520.00 within 20 days of the filing of the order. The employer paid the $7,520.00 as ordered.

1998

- **December 28, 1998 in Mecklenburg County District Court**—Misdemeanor workers' compensation fraud charges on Edward Rann were dismissed by the District Attorney after Mr. Rann made restitution of $2300.00 to Zenith Insurance Company. The first setting of the case was on October 31, 1998. Subpoenas were sent to Mr. Rann, the private investigator hired by Zenith, and the adjuster. A subpoena was not sent to the N.C. Industrial Commission investigator. The adjuster had left Zenith and was working for another company in the same building but was not served with the subpoena. The case could not proceed that day because the adjuster and the investigator were not present to present the case. Instead of continuing the case to get the subpoena served on the adjuster and to notify the investigator, the District Attorney agreed to a defense proposal to accept restitution and drop the case against Mr. Rann. The case was continued until the 28th of December to give the defendant time to pay the money. Restitution was received by Zenith on December 8, 1998.
- **October 27, 1998 in Gaston County District Court**—Jeffrey S. Blanton entered a plea of guilty to Misdemeanor Workers' Compensation Fraud. On 1 May 1996 Mr. Blanton fell from a roof while working as a subcontractor. He was treated and released from the hospital and returned to work the following day. On 15 May 1996 his contract was terminated due to poor quality. Mr. Blanton did not seek further medical treatment until 26 August 1996. The treating doctor was under the impression the treatment was for a work-related injury that he had treated Mr. Blanton for in 1995. Mr. Blanton told the insurance company he had not worked since the accident on 1 May 1996. On January 6-7,1997, video surveillance revealed Mr.

Blanton was working as a roofer. On 8 January 1997 Mr. Blanton signed a sworn interrogatory and again denied working since 1 May 1996, stating he was totally disabled from working.
The investigator, hired by the insurance company, who obtained the surveillance video did not appear at court. Attempts by the Sheriff to serve a subpoena were unsuccessful and attempts to contact the agency made by the Industrial Commission were not successful. The adjuster handling the case was in a meeting and the company would not get her out to assist in contacting the investigator. With the case in jeopardy of dismissal, the District Attorney offered to not oppose a Prayer for Judgment Continued in order to get an admission of guilt. The offer was accepted and Mr. Blanton was given a PJC. He was ordered to pay cost of court. There was no restitution involved.

- **October 9, 1998 in Wake County District Court**—George A. Dunn, Jr. entered a plea of guilty to two counts of Misdemeanor Workers' Compensation Fraud. The two cases were combined for judgment and Mr. Dunn was ordered to pay court costs and given a Prayer for Judgment Continued. Mr. Dunn had reported injuries in April 1996 while employed at Raleigh Auto Parts and again in July 1997 while employed by R & H Produce. In both cases, Mr. Dunn lied to the adjuster handling the case, stating he had no previous back injuries or workers' compensation claims when he had filed three prior to 1996. In one of those cases, he had received a cash settlement on a clincher. Both claims were denied by the carriers, and there was no restitution involved.
- **September 3, 1998 in Mecklenburg County District Court**—Viva Derksen Halcom entered a plea of guilty to a charge of failing to carry Workers' Compensation Insurance. In December 1995, Ms. Halcom was a co-owner of Creative Walls in Charlotte and employed three or more employees. The Industrial Commission became aware of the case when an employee was injured and filed a claim. The employee sustained a torn cartilage in his wrist while attempting to catch a falling ladder. The company initially denied the claim. The company did not obtain Workers' Compensation Insurance until November 1996. The case was eventually resolved prior to the criminal case being heard. Ms. Halcom was represented by counsel and was given a Prayer for Judgment Continued upon her plea of guilty. She was ordered to pay court costs and maintain Workers' Compensation Insurance as applicable.
- **August 26, 1998 in Rockingham County District Court**—Greeley L. White was convicted of making a false statement of a material fact on March 12, 1997 in order to obtain workers' compensation benefits from Mayo Yarns, Inc. and Travelers Insurance Co. Mr. White stated that after he works four hours of light duty at his regular job, he has to go home and go to bed because of the pain. Video surveillance disclosed that he does not go home, but instead goes to a used car dealership where he appears to regularly do maintenance work on vehicles and was observed pushing a truck that appeared to be inoperative. Mr. White received the maximum sentence of 45 days, 44 of which were suspended. He was to be placed on supervised probation for 18 months and, during that period, was to regularly submit to unannounced substance abuse testings directed by the probation officer; and he was to pay a fine of $1,000 plus all court costs.
- **August 21, 1998 in Mecklenburg County District Court**—Steve Guter entered a plea of guilty to a charge of failing to carry Workers' Compensation Insurance. In March 1995, Mr. Guter was the owner of Spoon's Restaurant in Charlotte and employed three or more employees. Mr. Guter did not obtain Workers' Compensation Insurance until November 1996. The Industrial Commission became aware of this case when an employee was injured and filed a claim. The employee sustained a serious cut to his right hand and damage to the tendons in the hand. The wound developed a staph infection and he had to undergo skin graft surgery. The claim was initially denied by Mr. Guter. It was eventually resolved prior to the criminal case being heard. Mr. Guter was represented by counsel and was given a Prayer for Judgment Continued upon his plea of guilty. He was ordered to pay court costs and maintain Workers' Compensation Insurance as applicable.
- **August 18, 1998 in Vance County Superior Court**—Preston Dunn entered a plea of guilty to a charge of failing to carry Workers' Compensation Insurance. In March 1996, Mr. Dunn was the owner of Budding international and employed three or more employees. The Industrial Commission became aware of the situation when an employee was injured and filed a claim. The employee sustained an injury to his hand when a table saw kicked back and lacerated his hand. Mr. Dunn refused to pay the medical bills and temporary total disability. No resolution had been reached at the time the case went to criminal court. Mr. Dunn plead guilty in Superior Court and was given 60 months of probation, ordered to pay a $200.00 fine, pay costs of court, reimburse the state for his court appointed attorney, and make restitution. The medical bill amounted to approximately $1,900.00, and temporary total disability was approximately $2,700.00. There has not been a permanent disability rating given to date. Mr. Dunn's business is now closed.

- **May 14, 1998 in Craven County District Court**—Daniel E. Mitchell entered a plea of no contest to a misdemeanor charge of failure to carry Workers' Compensation Insurance. The District Court agreed to give the defendant a Prayer for Judgment with the stipulation that he keeps a workers' comp policy in effect.
- **April 7, 1998 in Franklin County District Court**—Rhonda Layton pleaded guilty to two consecutive Class 1 Misdemeanor Workers' Compensation Fraud violations after claiming inability to work when she was working for another company while receiving workers' compensation benefits. She was originally charged with Felony Workers' Compensation Fraud. She was given a 90-day suspended sentence, and placed on supervised probation for four years, fined $100.00 and court costs of $160.00, and ordered to pay $3,787.39 in restitution to Builders Mutual Self Insurance Fund.

1997

- **November 6, 1997 in Cabarrus County District Court**—Richard Lindsey pleaded guilty to a Class 1 Misdemeanor Workers' Compensation Fraud violation after claiming to be injured on the job when the injury actually occurred while he was playing semi-pro football. He was given a 45-day suspended sentence and 30 hours of community service and administrative costs of the same, fined $80 court costs, and ordered to pay $8,545.72 in restitution to Builders Mutual Self Insurance Fund.
- **August 6, 1997 in Haywood County District Court**—Robin L. Eddy pleaded guilty to a Class 1 Misdemeanor Workers' Compensation Fraud violation after claiming inability to work when she started to work for another company while receiving workers' compensation benefits. She was ordered to pay restitution of $1,270.00 to State Farm Insurance Company and pay court costs, and was given a Prayer for Judgment Continued due to her lack of a criminal record.

ARTICLE IX. REPORT OF EARNINGS

Rule 901

Check Endorsement

If a self-insured employer, carrier or third party administrator places "check endorsement" language on the back of an employee's check, the following language (or similar language approved by the Industrial Commission) shall be used:

By endorsing this check, I certify that I have not worked for or earned wages from any business or individual during the period covered by this check, or that I have reported any earnings to the employer/carrier paying me workers' compensation benefits. I understand that making a false statement by endorsing this benefit check may result in civil or criminal penalties.

Rule 902

Notice

A self-insured employer, carrier or third party administrator shall not use check endorsement language on the back of an employee's workers' compensation benefit check unless the employee has been provided the following Notice sent by certified mail return receipt requested:

Notice to Employee Receiving Workers' Compensation Benefits

This NOTICE is intended to advise you of important information you need to know if you are receiving workers' compensation benefits.

Please TAKE NOTICE of the following:

(1) When you are receiving weekly workers' compensation benefits, you must report any earnings you receive to the insurance company (or employer if the employer is self-insured) that is paying you the benefits. "Earnings" include any cash, wages or salary received from self-employment or from any employment other than the employment where you were injured. Earnings also include commissions, bonuses, and the cash value for all payments received in any form other than cash (e.g., a building custodian receiving a rent-free apartment). Commission bonuses, etc., earned before disability but received during the time you are also receiving workers' compensation benefits do not constitute earnings that must be reported.

(2) You must report any work in any business, even if the business lost money or if profits or income were reinvested or paid to others.

(3) Your endorsement on a benefit check or deposit of the check into an account is your statement that you believe that you are entitled to receive workers' compensation benefits. Your signature on a benefit check is a further affirmation that you have made no material false statement or concealed any material fact regarding your right to receive the benefit check.

(4) Making false statements for purpose of obtaining workers' compensation benefits may result in civil and criminal penalties.

Rule 903

Employee's Obligation to Report Earnings

A self-insured employer, carrier or third party administrator may require the employee to complete a Form 90 Report of Earnings when reasonably necessary but not more than once every six months.

The Form 90 must be sent to the employee by certified mail, return receipt requested, and include a self-addressed stamped envelope for the return of the Form.

The employee shall complete and return the Form 90 Report of Earnings within 15 days after receipt of a Form 90. If the employee fails to complete and return the Report of Earnings within 30 days of receipt of the Form, the self-insured employer, carrier or third party administrator may seek an order from the Executive Secretary allowing the suspension of benefits. The self-insured employer, carrier or third party administrator shall not suspend benefits without Commission approval. If the Commission suspends benefits for failure to complete and return a Form 90 Report of Earnings, the self-insured employer, carrier or third party administrator shall immediately reinstate benefits to the employee with back payment as soon as the Report of Earnings is submitted by the employee. If benefits are not immediately reinstated, the employee should submit a written request for an Order from the Executive Secretary instructing the self-insured employer, carrier or third party administrator to reinstate benefits. If the employee's earnings report does not indicate continuing eligibility for partial or total disability compensation,

then the self-insured employer, carrier or third party administrator may apply to the Commission to terminate or modify benefits pursuant to Commission procedure, including filing a Form 24, 26 or 33.

Compensating fairly

You can't put an actual monetary value on a finger or a foot.
Still, the General Assembly in 1987 set up a schedule of benefits, in connection with North Carolina's worker's compensation law, for workers who lose a body part, and built in adjustments for inflation.

Two classes of injuries inexplicably were left out of the inflation provisions. So workers who suffer permanent scars to or who lose the function of an organ -- a lung or kidney, for instance -- receive compensation capped at the 1987 level. That is grossly unfair, which Democratic Rep. Wayne Goodwin of Rockingham wants to fix.

Business interests prefer to delay a bill, saying the issue needs to be studied. And House leaders are willing to let some workers be shortchanged likely for two more years (based on the rules for study panels), saying debate will take too long in a session that is extended already.

The question is, what's to study? The point of the worker's comp law is to recompense workers whose job-related injuries cause bodily damage. It's hard to argue against compensating in an evenhanded way for injuries with potentially life-changing effects, whether it involves a limb or an internal organ -- especially since workers are barred by law from suing employers for workplace injuries.

A major opponent of a bill is the Weyerhaeuser Co., a national wood-products company that is in a legal fight with some of its North Carolina employees over asbestos injuries. It's possible that good news on compensation for workers with damaged lungs, however justified, could hurt Weyerhaeuser's, and other companies', cases in court, and that includes granting favorable legal standing to lung ailment sufferers.

But big corporations' legal strategy shouldn't be allowed to drive whether the law is constructed so as to be fair to Tar Heel workers. Goodwin ought to introduce his bill this year and press for passage, to give those whose lungs -- and other organs -- have been injured fair access to worker's compensation funds.

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WORKERS' COMPENSATION QUIZ

WHICH STATE, AMONG THE BIG TWELVE,
IS ***SLOWEST*** IN
INITIATING

MEDICAL TREATMENT

&

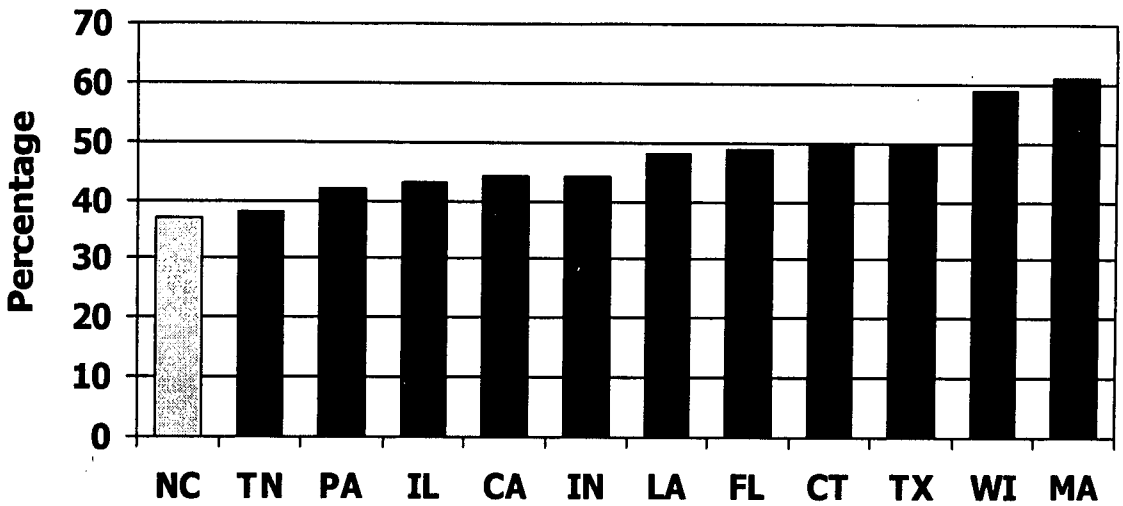
WAGE LOSS BENEFITS

FOR INJURED WORKERS AND
THEIR FAMILIES?

(ONE GUESS ALLOWED)

(Flip For Answer)

NORTH CAROLINA!



Percent of Claims Paid within 14 Days of Payor Notice of Injury, Claims > 7 Days Lost Time, 2001/2002 Claims

Under ***current North Carolina law***, insurance companies have 14 days in which to deny a claim or pay compensable claims within fourteen days. G.S. § 97-18. The chart above, from the Workers' Compensation Research Institute, shows that North Carolina insurance companies rank at the bottom in timely initiating payment of compensable claims.

Senate Bill 984 would make give insurance companies 104 days to start paying benefits. Senate Bill 984 provides:

> When the employer admits the employee's right to compensation, the first installment of compensation ~~payable~~ by the employer shall ~~become due on the fourteenth day after the employer has written or actual notice of the injury or death, on which date all compensation then due shall be paid.~~ be paid **within 14 days after the employer or carrier completes its investigation of the employee's claims. The employer shall make a decision whether to admit or deny an employee's right to compensation no more than 90 days** after the employer has written notice . . .

SB 984
MAKING BAD PERFORMANCE WORSE – AIMING NORTH CAROLINA IN THE WRONG DIRECTION!

Prepared By Senator Douglas Berger

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Susan B Kilzer	Attorney 3708 Lyckan Pkwy Durham 2770
John Wichmann Jr.	3200 Crossdale Drive Durham NC 27705
Janet Downing	3593 Bogie Island Rd. Fayetteville NC 28312
Mark Stenlicht	230 Green St., Fayetteville 28301
Victor Farah	Jernigan Law Firm
LEONARD JERNIGAN	JERNIGAN LAW FIRM
Kathy Hawkins	Progress Energy
Henry Patterson	Patterson Harkavy LLP
DON BURRIS	CONTINENTAL AIR G50
Brandy White	Crumley & Assoc. Alamance
April Shepherd	Crumley & Assoc - Winston-Salem/Forsyth

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 17, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Evie Forrest	Crumley + Associates
Rhonda Bescher	Crumley + Associates
Vivian Farrar	3405 Trym Rd Raleigh 27603
Joshua Hough	506 Grant St Badin, NC 28009
Cloyd B. DeBerry	
[illegible]	Lindley - Rockingham NC
Gertie P Moore	Lumberton N.C.
Sheila Tatton-DeWitt	JLPCivitas Institute
Tripp Melton	Sen. Stevens Office
Carla Marshburn	Carolina Case Management
Laura Anderson	

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Megan Cabina	
Rita Morris	
Anne R Hams	Attorney
Margaret Lynn	SB-984
Bill Lynn	SB-984
Lisa Martin	NC Home Builders Assoc.
R. Paul Wilms	NCHBA
Dennis Hagland	
Donna Paschall	Durham County
[illegible]	Orange Co. NC
Virgil Tyson	Wayne Co NC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Delantis Hadley Jr.	Law Firm of James Scott Farrin
Mike Anderson	Anderson & Anderson Attorneys
Susan Atkinson	Law Firm of James Scott Farrin
Robert Worcester	Winston Salem NC.
Robert Harrell	Walnut Cove NC
Carolyn Bowling	Law Firm SAM B Taylor
Clarence J. Wiggins	
Ruth Dagoner	
Harold P.	Samis Scott Farrin
Brenda L Rogers	Atty. Samuel Taylor
Kent Tibbals	Sam Taylor

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Craig Bowers	James Scott Farrin
Ben Fagg	Denver N. C.
Carl Barnes	424 Habitat Ct Raleigh NC 27610
Kay Barker	BCT
Bessie Spivey	Wallace & Graham P.O. Box 47 Riegelwood NC 28456
Leonard Gresham	PACE - Local 2-738
Lee Cantrell	Rowan County Local 1-108
Tony Shephard	Duke Power Home Lincolnton Co. 2265 Mt Zion Church
Lee Beaulam	Duke Power Lincolnton County
Tim Dimmick	Forsyth Co
Milton Jones	Duke Power Lincoln Co

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
C. M. Hoffmeyer	Estancia Co Resident

Senate Commerce Committee
Thursday, May 19, 2005, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1008	911 Centers Fund Access.	Senator Hagan
SB 1082	Health Benefits for Disabled Local LEO.	Senator Berger
SB 863	Loss of Workers' Comp for Fraud.	Senator Berger
SB 864	Workers' Comp/Injury to Extremities.	Senator Berger
SB 866	Increase Cap on Loss of Workers' Organ.	Senator Berger

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, May 19, 2005 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on May 19, 2005, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Jennifer Keys of Boomer, sponsored by Senator John Garwood; and Joseph Hutchinson of North Wilkesboro, also sponsored by Senator Garwood.

Senator Soles announced he was placing the workers' compensation bills sponsored by Senator Doug Berger in a subcommittee chaired by Senator Walter Dalton, with Senator Tom Apodaca, Senator D. Berger, Senator Jim Jacumin and Senator Martin Nesbitt as members. The bills include:

SB 863 Loss of Workers' Comp for Fraud.
SB 864 Workers' Comp/Injury to Extremities.
SB 865 Workers' Comp/Employee Work Incentive.
SB 866 Increase Cap on Loss of Workers' Organ.
SB 969 Amend Workers' Comp. Act -3. (PCS: Total & Permanent Disability/Adjust Comp.)
SB 1112 Amend Workers' Comp. Act -2. (PCS: Workers'Comp./Choice of Physician)
SB 1151 Amend Workers' Comp. Act -1. ((PCS: Expedite Payment of Workers' Comp.)

Senator Soles introduced Senator Kay Hagan to present SB 1008, 911 Centers Fund Access. Senator Apodaca moved adoption of a committee substitute for purposes of discussion. The motion carried. Senator Hagan explained the substitute and asked Ms. Tonya Pearce, Deputy Director for Durham 911 and Second Vice President of the North Carolina Chapter of the National Emergency Number Association, to speak on the bill. Senator Doug Berger moved the adoption of Amendment 1 to the committee substitute. The motion carried. Mr. Mitchell Johnson, Assistant City Manager of Greensboro, spoke in favor of the bill, which would allow counties and municipalities to use surcharges collected on telephone bills for training in addition to equipment. Mr. Tom Morrow, Government Liaison for Sprint, spoke on behalf of 22 telephone companies across the state in opposition to the bill. After several members asked questions and made suggestions about the bill, Senator Hagan removed it from the committee's agenda for further work. Senator Soles asked if any in the audience wanted to speak before the bill was removed. Mr. Craig Whittington, Guilford County 911, also spoke in favor of the bill.

Senator Soles recognized Senator Phil Berger to present SB 1082, Health Benefits for Disabled Local LEO. Several senators raised questions about affordability on behalf of the local governments that would be required to pay for the health benefits. No vote was taken on the bill.

The meeting adjourned at noon.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

Senate Commerce Committee
Senator R. C. Soles, Jr., Chair

May 19, 2005

MEMORANDUM

TO: Senator Walter Dalton, Chair
Senator Tom Apodaca
Senator Doug Berger
Senator Jim Jacumin
Senator Martin Nesbitt

FROM: Senator R. C. Soles, Jr., Chair

SUBJECT: Subcommittee on Workers' Compensation Bills

Thank you for agreeing to serve on a subcommittee to consider several Workers' Compensation bills. These bills include:

SB 863	Loss of Workers' Comp for Fraud.	Senator Berger
SB 864	Workers' Comp/Injury to Extremities.	Senator Berger
SB 865	Workers' Comp/Employee Work Incentive.	Senator Berger
SB 866	Increase Cap on Loss of Workers' Organ.	Senator Berger
SB 969	Amend Workers' Comp. Act -3.	Senator Berger
SB 1112	Amend Workers' Comp. Act -2.	Senator Berger
SB 1151	Amend Workers' Comp. Act -1.	Senator Berger

Please let me know when the bills will be ready for consideration before the Senate Commerce Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1008

Short Title:	911 Centers Fund Access.	(Public)
Sponsors:	Senators Hagan; Atwater, Forrester, and Snow.	
Referred to:	Commerce.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC SAFETY TELEPHONE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-3 is amended by adding a new subdivision to read:

"(10) "Training" means any educational or other professional developmental resource that enhances the receipt, processing, and proficiency of emergency call taking and related call processing. This includes, but is not limited to, initial and (where applicable) recertification of such training. This also includes all associated cost of the training and related registrations, workbooks, manuals, software, and travel expenses."

SECTION 2. G.S. 62A-4(d) reads as rewritten:

"(d) The ordinance shall fix a date on which it and the imposition and collection of the charges as provided in the ordinance shall become effective, but the effective date shall be at least 120 days following the initial date of adoption of such ordinance and at least 60 days for any changes to the ordinance by the governing authority of the local government."

SECTION 3. G.S. 62A-8(a) reads as rewritten:

"**§ 62A-8. Payments from Fund.**

(a) Money from the Emergency Telephone System Fund shall be used only to pay for:

(1) The lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software and database provisioning, addressing, and nonrecurring costs of establishing a 911 system, and

(2) The rates associated with the service supplier's 911 service and other service supplier recurring charges.

(3) Training, continuing education, certifications and recertification of PSAP staff and support personnel related to call intake and call

processing of emergency calls for assistance (total annual allowable expenditure not to exceed two percent (2%) of the PSAP's total annual budget).

(4) The installation, maintenance and required upgrades for security and environmental health systems relating to the operations of the communications center, as it impacts the security of the PSAP and provides for the health and well-being of the communications staff (total annual allowable expenditure not to exceed three percent (3%) of the PSAP's total annual budget).

(b) The following expenses are not eligible for payment from the Fund: the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring, ~~training,~~ and compensating dispatchers, and the lease or purchase of mobile communications vehicles, ambulances, fire engines, or other emergency vehicles.

(c) A local government may contract with a service supplier for any term negotiated by the service supplier and the local government and may make payments from the Emergency Telephone System Fund to provide any payments required by the contract."

SECTION 4. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1008
PROPOSED COMMITTEE SUBSTITUTE S1008-CSRL-28 [v.1]

5/18/2005 9:30:50 PM

Short Title: 911 Centers Fund Access. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

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(2) The rates associated with the service supplier's 911 service and other service supplier recurring charges.

(3) Training, continuing education, certification and recertification of public safety answering point staff and support personnel related to call intake and call processing of emergency calls for assistance (total annual allowable expenditure not to exceed two percent (2%) of the public safety answering point's total annual budget). Training, continuing education, certification and recertification under this subdivision must take place in the State and, if available, must take place at a State community college or the E-NC Authority.

(4) The installation, maintenance and required upgrades for security and environmental health systems relating to the operations of the communications center, as it impacts the security of the public safety answering point and provides for the health and well-being of the communications staff (total annual allowable expenditure not to exceed three percent (3%) of the public safety answering point's total annual budget).

(b) The following expenses are not eligible for payment from the Fund: the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring, ~~training,~~ and compensating dispatchers, and the lease or purchase of mobile communications vehicles, ambulances, fire engines, or other emergency vehicles.

(c) A local government may contract with a service supplier for any term negotiated by the service supplier and the local government and may make payments from the Emergency Telephone System Fund to provide any payments required by the contract."

SECTION 4. This act becomes effective July 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE May 19, 2005

S. B. No. 1008 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) [redacted] D. Berger?
Sen.)

moves to amend the bill on page 1, lines 5-11

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read

"(10) "Training" means education that enhances the receipt, processing, and proficiency of emergency call taking and related call processing. Costs associated with the training includes registration fees, workbooks, manuals, software and related travel expenses.";

and on page 2 line 1 by deleting the words ", certification and recertification";

and on page 2 lines 9-15 by deleting those lines.

SIGNED [signature]

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1082

Short Title: Health Benefits for Disabled Local LEO. (Public)

Sponsors: Senator Berger of Rockingham.

Referred to: Commerce.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LOCAL GOVERNMENTS TO PROVIDE HEALTH INSURANCE BENEFITS TO THEIR DISABLED LAW ENFORCEMENT OFFICERS IF THIS BENEFIT IS PROVIDED TO THE EMPLOYER'S OTHER RETIREES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 12I.

"Health Insurance Benefits for Local Law Enforcement Disability Retirees.

"**§ 143-166.90. Health insurance benefits for disabled local law enforcement officers.**

(a) Any law enforcement officer, as defined by G.S. 143-166.50(a)(3), employed by a county, city, town, or other political subdivision of the State, who becomes disabled and entitled to a benefit in accordance with G.S. 128-27(c), shall be eligible for health insurance benefits on the same basis as a person who retired from that employer in accordance with G.S. 128-27(b21). The employer shall provide health insurance benefits to a disabled law enforcement officer without regard to the number of years of service credited to the officer."

SECTION 2. This act becomes effective July 1, 2005.

SENATE BILL 1082:
Health Benefits for Disabled Local LEO

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 18, 2005
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1082 amends Chapter 143 to create a new Article 12I to require counties and municipalities to provide law enforcement officers who become disabled health insurance benefits. Benefits must be provided on the same basis as a retired employee, except that the benefits must be provided without regard to the number of years of service.***

To receive health insurance benefits, the officer must be certified as disabled by the Medical Board of the Local Governmental Retirement System pursuant to G.S. 128-27(c). The Board must, after a medical examination, certify that the officer is mentally or physically incapacitated, that the incapacity was incurred at the time of active employment, and is likely to be permanent.

The statute defining a law enforcement officer and the statute governing certification of physical or mental disability are set out below.

CURRENT LAW: Under current law, there is no requirement that a disabled law enforcement officer receive health insurance benefits from local governments.

EFFECTIVE DATE: Senate Bill 1082 would become effective July 1, 2005.

§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.

(a) Definitions. – The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, have the following meaning:

...

(3) "Law-enforcement officer" means a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. "Law enforcement officer" also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board.

...

§ 128-27. Benefits.

...

(c) Disability Retirement Benefits. – Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically

incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, effective April 1, 1991, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 863

Short Title:	Loss of Workers' Comp for Fraud.	(Public)
Sponsors:	Senators Berger of Franklin; Atwater, Berger of Rockingham, Bingham, Boseman, Cowell, Hartsell, and Snow.	
Referred to:	Judiciary II.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO TERMINATE PAYMENTS OF WORKERS' COMPENSATION OTHER THAN MEDICAL COMPENSATION FOR EMPLOYEES WHO ARE CONVICTED OF HAVING FRAUDULENTLY OBTAINED THE COMPENSATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-88.2 is amended by adding a new subsection to read:

"(a1) Any compensation that an employee is receiving under G.S. 97-29 or G.S. 97-30 shall be terminated, and the employee is not entitled to compensation under G.S. 97-31 when the employee is convicted under subsection (a) of this section for making a false statement or representation in order to obtain the compensation. This subsection does not apply to any benefit or payment the employee receives as medical compensation under G.S. 97-25."

SECTION 2. This act becomes effective October 1, 2005, and applies to all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved on or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered on or after that date; and all awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded on or after that date.

SENATE BILL 863:
Loss of Workers' Comp for Fraud

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 3, 2005
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 863 would provide that workers' compensation payments would be terminated if the employee receiving payments is convicted of having fraudulently obtained the compensation.***

CURRENT LAW: G.S. 97-88.2(a) makes it unlawful to willfully make a false statement or representation of material fact for the purpose of obtaining or denying, or assisting another to obtain or deny, workers' compensation payments. Violation is a Class 1 misdemeanor if the amount at issue is less than $1000. It is a Class H felony if the amount at issue is $1000 or more. The court is authorized in such a case to order restitution.

BILL ANALYSIS: Senate Bill 863 would provide that, if an employee is convicted under G.S. 97-88.2(a), then any compensation the employee is receiving under G.S. 97-29 (for total incapacity) or G.S. 97-30 (for partial incapacity) would be terminated, and the employee would not be entitled to compensation under G.S. 97-31 (which sets out rates of compensation for specific injuries). The employee would still be entitled to payments received under G.S. 97-25 (medical expenses of the employee paid by the employer).

EFFECTIVE DATE: The bill would be effective when it becomes law and would apply to agreements approved by the NC Industrial Commission on or after that date, all orders or decisions of the NC Industrial Commission on or after that date, and all awards of the NC Industrial Commission on or after that date.

S0863e1-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 864

Short Title:	Workers' Comp/Injury to Extremities.	(Public)
Sponsors:	Senators Berger of Franklin; Boseman, Cowell, Holloman, Kinnaird, Nesbitt, Snow, and Soles.	
Referred to:	Judiciary II.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW COMPENSATION UNDER THE WORKERS' COMPENSATION ACT FOR INJURIES OF THE EXTREMITIES OF THE BODY OF THE EMPLOYEE WHERE THE INJURY ARISES OUT OF AND IN THE COURSE OF EMPLOYMENT AND IS THE DIRECT RESULT OF A SPECIFIC TRAUMATIC INCIDENT OF THE WORK ASSIGNED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-2(6) reads as rewritten:

"(6) Injury. – "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident. With respect to ~~back injuries,~~injuries to the back or extremities of the body, however, where the injury ~~to the back~~ arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, "injury by accident" shall be construed to include any disabling physical injury to the ~~back~~back or extremities of the body arising out of and causally related to such incident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices ~~which~~ that function as part of the body; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for unless injury to them is incidental to a compensable injury."

SECTION 2. This act is effective when it becomes law and applies to all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved on or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered on or after that date; and all

awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded on or after that date.

SENATE BILL 864:
Workers' Comp/Injury to Extremities

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 3, 2005
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 864 would add injury to extremities to those injuries for which an employee may be compensated under the Workers' Compensation Act if the injury arises out of and in the course of employment and is the direct result of a specific traumatic incident.

CURRENT LAW: G.S. 97-2(6) defines injury for purposes of determining when compensation is payable to an employee under the Workers' Compensation Act. An injury is defined as an injury that arises out of and in the course of employment that occurs by accident. According to NC case law, an "accident" is an unexpected or unusual event, and an injury that occurs as part of an employee's usual and customary work routine is not compensable under the Act. In 1983, the definition of injury was amended as it related to back injuries. "Injury by accident" now includes any disabling back injury arising out of and causally related to a specific traumatic incident of the work assigned to an employee. The effect of the amendment was to relax the requirement that there be some unusual circumstance that accompanies a back injury. Back injuries that occur gradually over a long period of time are not compensable, but events that occur over a cognizable time period that cause a back injury are compensable.

BILL ANALYSIS: Senate Bill 864 would amend the definition of injury so that "injury by accident" would also include any injury to extremities that arises out of and is causally related to a specific traumatic incident of the work assigned to an employee. This would allow employees to be compensated for those injuries without showing that an unusual circumstance accompanied the injury.

EFFECTIVE DATE: The bill would be effective when it becomes law and would apply to agreements approved by the NC Industrial Commission on or after that date, all orders or decisions of the NC Industrial Commission on or after that date, and all awards of the NC Industrial Commission on or after that date.

S0864e1-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 866

Short Title:	Increase Cap on Loss of Workers' Organ.	(Public)
Sponsors:	Senators Berger of Franklin; Bingham, Boseman, Cowell, Hartsell, Holloman, Kinnaird, Nesbitt, Snow, and Soles.	
Referred to:	Judiciary II.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM AWARD UNDER THE WORKERS' COMPENSATION ACT FOR THE LOSS OR PERMANENT INJURY TO AN IMPORTANT ORGAN OR PART OF THE BODY NOT OTHERWISE ADDRESSED IN THE SCHEDULE OF INJURIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-31(24) reads as rewritten:

"(24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed ~~twenty thousand dollars ($20,000).~~fifty thousand dollars ($50,000)."

SECTION 2. This act is effective when it becomes law and applies to all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved on or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered on or after that date; and all awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded on or after that date.

SENATE BILL 866:
Increase Cap on Loss of Workers' Organ

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 3, 2005
Introduced by:	Sen. Berger of Franklin	**Summary by:**	O. Walker Reagan Committee Counsel and Dickie Brown, Research Assistant
Version:	First Edition		

SUMMARY: ***Senate Bill 866 would increase the maximum award for loss of or permanent injury to an important organ or part of the body from $20,000 to $50,000 under the Workers' Compensation law.***

CURRENT LAW: G.S. 97-31(24) states that any external or internal organ or important body part that is lost or receives permanent injury under circumstances governed by the Workers' Compensation law, that is not payable under any schedule of injuries in the Workers' Compensation law, is entitled to a maximum benefit not to exceed $20,000.

Although not defined in statute, courts have found the following to be organs or body parts for which compensation is otherwise payable: bladder, spleen, lungs, stomach, intestines, pancreas, reproductive organs, loss of sense of smell and taste. This is not an exhaustive list.

BILL ANALYSIS: Section 1 of the bill rewrites G.S. 97-31(24) to increases the maximum amount the Industrial Commission may award for loss or permanent injury to an external or internal organ or important body part from $20,000 to $50,000. This section applies only to those organs or body parts for which no compensation is payable under any other part of G.S. 97-31 (attached).

EFFECTIVE DATE: The bill would become effective when it becomes law and would apply to all North Carolina Industrial Commission agreements, decisions, and awards entered on or after that date.

§ 97-31. Schedule of injuries; rate and period of compensation.

In cases included by the following schedule the compensation in each case shall be paid for disability during the healing period and in addition the disability shall be deemed to continue for the period specified, and shall be in lieu of all other compensation, including disfigurement, to wit:

(1) For the loss of a thumb, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 75 weeks.

(2) For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 45 weeks.

(3) For the loss of a second finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 40 weeks.

(4) For the loss of a third finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 25 weeks.

(5) For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 20 weeks.

any eye, this shall be deemed "industrial blindness" and compensated as for total loss of vision of such eye.

(20) The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maximum and minimum as set out in G.S. 97-29.

(21) In case of serious facial or head disfigurement, the Industrial Commission shall award proper and equitable compensation not to exceed twenty thousand dollars ($20,000). In case of enucleation where an artificial eye cannot be fitted and used, the Industrial Commission may award compensation as for serious facial disfigurement.

(22) In case of serious bodily disfigurement for which no compensation is payable under any other subdivision of this section, but excluding the disfigurement resulting from permanent loss or permanent partial loss of use of any member of the body for which compensation is fixed in the schedule contained in this section, the Industrial Commission may award proper and equitable compensation not to exceed ten thousand dollars ($10,000).

(23) For the total loss of use of the back, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 300 weeks. The compensation for partial loss of use of the back shall be such proportion of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases where there is seventy-five per centum (75%) or more loss of use of the back, in which event the injured employee shall be deemed to have suffered "total industrial disability" and compensated as for total loss of use of the back.

(24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed twenty thousand dollars ($20,000).

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
John Mattox	Goodrich
Mike Carpenter	NCHBA
[illegible]	G&K
[illegible]	For the Committees.
Jeana Blackman	Law Clerk - NCDOJ
Paul Pulley	NCATL
Larry Keen	NCCCS
Lee Thun	Ryphill Assoc.
Alice Garland	NCDOC
Chip Kullen	Nelson Mullins
Barbara Hunter	Smith Moore

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Winn	NCLM
John Goodman	Allen Associates
Ellis Hankins	NCLM
Jim Blackburn	NC Association of County Commissioners
Patrice Roesler	"
Paul Meyer	"
[illegible]	[illegible]
Bill Scoggin	[illegible]
Colleen Kochanek	NCCEP
Kathleen Edwards	UNC-CH Legis. Reporting Service
Richard Taylor	NC Wireless 911 Board

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Chris Stanley	Surry County 911 PO Box 1280 Dobson, NC 27017
Jonathan Bledsoe	Surry County 911 PO Box 1280 Dobson NC 27017
Ronnie Hayes	Columbus County Emergency services 1008 N. Thompson St. Whiteville NC 28472
Lorin Mueller	NC Coalition of Police
Steve Newton	Orange County Emergency Management
Debby Hines	Randolph County 9-1-1
R. Craig Whittington	Guilford Metro 9-1-1
Jim Southup	Durham City/County 911
Lisa Martin	NC Home Builders Assoc.
R. Paul Wilms	NCHBA
Jeff VanDyke	BST
John Rust	NCFPC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Sheila Tatton-DeWitt	JLP Civitas Institute
Wesley E. Reid	Cruthers Metro 9-1-1
Cody Grasty	WCU
Joey Webb	Haywood County 911 215 North Main St. Waynesville, NC 28786
Anthony Barker	Haywood County 911 Communications 215 North Main St Waynesville NC 28786
Judy Capparelli	Raleigh Wake 9-1-1 P.O. Box 590 Raleigh. NC 27602
Philip Penny	Raleigh Wake 9-1-1 P.O. Box 590 Raleigh. NC 27602
JASON BARBOUR	Johnston Co 911 PO Box 1049 Smithfield, NC 27577
Brett Renfrow	Johnston Co 911 PO Box 1049 Smithfield NC 27577
Harold Oakley JR	PERSON Co 9-1-1 P.O. BOX 1156 ROXBORO, NC 27573
JEREMIAH L. WHITT	PERSON Co 9-1-1 P.O. Box 1156 ROXBORO, N.C. 27573
Jami Fitzgerald	NCFPC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Eric Dyer	Greensboro News & Record
Tracy Judy	CT Communications, Inc.
Kary Isenhour	Sen. P. Berger's office
Cam Cover	BPM LLC
David P Stewart	307 E Main St Stoneville, NC 27049
Stacey Flannery	NCHCFA
Chris Kukla	Self-Help
Dana Simpson	Smith Anderson
Pam Wescott	Sprint
Stan Pace	Verizon
Mark Deason	Capitol Group

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Claudia McClinton	Holt York
Beverly	

Senate Commerce Committee
Tuesday, May 24, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 494	Regulate Telecommunications Services.	Senator Hoyle
SB 512	Electric Service Conflicts.	Senator Clodfelter
SB 718	Modular Home Sales/Installation Requirements.	Senator Hoyle
SB 828	ABC Stores to Sell North Carolina Wines.	Senator Hagan

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, May 24, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on May 24, 2005, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Katie Guffey of Mt. Holly, sponsored by Senator Jim Forrester; and Andrew Simpson of Cherryville, sponsored by Senator David Hoyle.

Senator Soles recognized Senator Hoyle to present SB 494, Regulate Telecommunications Services. Senator Hoyle moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Hoyle explained the bill. Senator Tom Apodaca moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles recognized Senator Kay Hagan to present SB 828, ABC Stores to Sell North Carolina Wines. Senator Tony Rand moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Hagan explained the bill. Senator Larry Shaw moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles recognized Senator Daniel Clodfelter to present SB 512, Electric Service Conflicts. Senator Rand moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Clodfelter explained the bill. He asked to have Jay Rouse representing the North Carolina Association of Electric Cooperatives to speak on the bill. Mr. Rouse spoke in favor of the bill. Senator Soles recognized the following to speak against the bill:

Ms. Jeanne Bonds, representing ElectriCities
Mr. John Marshall, Mayor of Statesville
Ms. Vivian Jones, Mayor of Wake Forest
Mr. Eddie Baysden, Executive Director of the Rocky Mount Chamber of Commerce, representing the Mayor of Rocky Mount

Senator Clodfelter said he welcomed more discussion of the bill. Senator Soles said he would continue discussion of the bill at Thursday's meeting.

After announcing that Senator Hoyle had asked that SB 718, Modular Home Sales/Installation Requirements, be taken up at a later meeting, Senator Soles adjourned the meeting at noon.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 24, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **494** Regulate Telecommunications Services.

Draft Number:	PCS 65321
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 25, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **828** ABC Stores to Sell North Carolina Wines.

Draft Number:	PCS 75316
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 494

Short Title:	Regulate Telecommunications Services.	(Public)
Sponsors:	Senators Hoyle and Rand.	
Referred to:	Rules and Operations of the Senate.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REGULATION OF TELECOMMUNICATIONS SERVICES TO REFLECT THE MODERN MARKET-BASED COMPETITIVE ENVIRONMENT AND TO PRESERVE UNIVERSAL ACCESS TO BASIC TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to telecommunications services.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 494
PROPOSED COMMITTEE SUBSTITUTE S494-CSRL-18 [v.5]

5/23/2005 5:16:19 PM

Short Title: Regulate Telecommunications Services. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE DEPLOYMENT OF COMPETITIVE BROADBAND SERVICE BY PUBLIC UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2 is amended by adding a new subsection to read:

"(b1) Broadband service provided by public utilities as defined in G.S. 62-3(23)a.6. is sufficiently competitive and shall not be regulated by the Commission."

SECTION 2. G.S. 62-3 reads as rewritten:

"**§ 62-3. Definitions.**

As used in this Chapter, unless the context otherwise requires, the term:

(1) "Broadband service" means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision.

~~(1)~~ (1a) "Broker," with regard to motor carriers of passengers, means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which as principal or agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.

~~(1a)~~ (1b) "Bus company" means any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. 62-260.

...."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 494:
Regulate Telecommunications Services

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 24, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Steven Rose
Version:	PCS S494-CSRL-18		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for SB 494 provides that broadband service is competitive and shall not be subject to regulation by the Utilities Commission when it is provide by telephone companies that are public utilities as defined in Chapter 62 of the General Statutes.***

CURRENT LAW: Current North Carolina law does not speak directly to this issue. However, these services are not currently regulated by the Utilities Commission and are presumably subject to regulation only by Congress and the Federal Communications Commission. The FCC considers a service to be "interstate" if more than 10% of the traffic on the associated lines is interstate traffic.

BILL ANALYSIS: The bill amends G.S. 62-2 (the declaration of policy for Chapter 62) by adding a new subsection declaring broadband service provided by regulated telecommunications public utilities to be competitive and not subject to regulation by the Utilities Commission. The bill also amends G.S. 62-3 (the definition section of Chapter 62) by adding a definition for the term "broadband service." Broadband service is high-speed access capability of not less than 200 kilobits per second in either direction and is used to provide access to the Internet or various computer related services as listed in the bill on page one, lines 11 to 19. (High-speed access obtained from cable TV providers, or DSL (digital subscriber line) services from telephone companies, are two examples of broadband service.) The definition in the bill does not include intrastate services already regulated by the Utilities Commission on the effective date of the act.

Below are some definitions of broadband found at ZDNet.com, including original attributions

From: http://searchnetworking.techtarget.com/sDefinition/0,,sid7_gci211706,00.html

In general, broadband refers to telecommunication in which a wide band of frequencies is available to transmit information. Because a wide band of frequencies is available, information can be multiplexed and sent on many different frequencies or channels within the band concurrently, allowing more information to be transmitted in a given amount of time (much as more lanes on a highway allow more cars to travel on it at the same time). ....

From:http://www.webopedia.com/TERM/B/broadband.html

A type of data transmission in which a single medium (wire) can carry several channels at once. Cable TV, for example, uses broadband transmission. In contrast, baseband transmission allows only one signal at a time. ....

From:http://www.part-15.org/public/kb/kb.asp?viewq=199

BROADBAND
Broadband is a descriptive term for evolving digital technologies that provide consumers a signal switched facility offering integrated access to voice, high-speed data service, video-demand services, and interactive delivery services.

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

S0494e1-SMRL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 494
PROPOSED COMMITTEE SUBSTITUTE S494-PCS65321-RL-18

Short Title: Regulate Telecommunications Services. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE DEPLOYMENT OF COMPETITIVE BROADBAND SERVICE BY PUBLIC UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2 is amended by adding a new subsection to read:

"(b1) Broadband service provided by public utilities as defined in G.S. 62-3(23)a.6. is sufficiently competitive and shall not be regulated by the Commission."

SECTION 2. G.S. 62-3 reads as rewritten:

"**§ 62-3. Definitions.**

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(1) "Broadband service" means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision.

~~(1)~~ (1a) "Broker," with regard to motor carriers of passengers, means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which as principal or agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.

~~(1a)~~ (1b) "Bus company" means any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. 62-260.

...."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 828

Short Title:	ABC Stores to Sell North Carolina Wines.	(Public)
Sponsors:	Senators Hagan; Albertson, Bingham, Garrou, Horton, Kerr, and Stevens.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE SALE OF NORTH CAROLINA WINES AT ALCOHOLIC BEVERAGE CONTROL STORES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-800 reads as rewritten:

"**§ 18B-800. Sale of alcoholic beverages in ABC stores.**

(a) Spirituous Liquor. – Except as provided in Article 10 of this Chapter, spirituous liquor may be sold only in ABC stores operated by local boards.

(b) Fortified Wine. – In addition to spirituous liquor, ABC stores may sell fortified wine. ABC stores may also sell wine products, irrespective of alcohol content by volume, which were classified as fortified wine by the ABC Commission prior to July 7, 2004.

(b1) In addition to spirituous liquor and fortified wines, ABC stores may sell any wines, irrespective of alcohol content by volume, made from grapes grown in North Carolina and wines produced in North Carolina.

(c) Commission Approval. – No ABC store may sell any alcoholic beverage ~~which~~ that has not been approved by the Commission for sale in this State.

(d) Expired."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 828
PROPOSED COMMITTEE SUBSTITUTE S828-CSRU-40 [v.9]

5/24/2005 10:47:21 AM

Short Title: Amend Wine Sales and Production Laws. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE ONE-TIME WINE SHIPPERS APPLICATION FEE, AND TO TRANSFER THE NORTH CAROLINA GRAPE GROWERS COUNCIL TO THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.

(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.
~~(36) Wine shipper permit – $100.00.~~"

SECTION 2. G.S. 18B-1001.1(a) reads as rewritten:

"(a) A winery holding a federal basic wine manufacturing permit located within or outside of the State may apply to the Commission for issuance of a wine shipper permit that shall authorize the shipment of brands of fortified and unfortified wines identified in the application. The applicant shall not be required to pay an application fee for the wine shipper permit. A wine shipper permittee may amend the brands of wines identified in the permit application but shall file any amendment with the Commission. Any winery that applies for a wine shipper permit shall notify in writing any wholesalers that have been authorized to distribute the winery's brands within the State that an application has been filed for a wine shipper permit. A wine shipper permittee may sell and ship not more than two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be lawfully sold. All sales and shipments shall be for personal use only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine."

SECTION 3.(a) Article 62 of Chapter 106 is recodified as Part 2H of Article 10 of Chapter 143B and reads as rewritten:

"~~Article 62.~~

"Part 2H. Grape Growers Council.

"§ ~~106-750.~~143B-437.70. **North Carolina Grape Growers Council – Creation; powers and duties.**

There is created the North Carolina Grape Growers Council of the Department of ~~Agriculture and Consumer Services.~~Commerce. The North Carolina Grape Growers Council shall have the following powers and duties:

(1) To identify and implement methods for improving North Carolina's rank as a wine-producing State;
(2) To assure orderly growth and development of North Carolina's grape and wine industry;

(3) To achieve public awareness of the quality of North Carolina grapes and wine;
(4) To coordinate the interaction of North Carolina's grape and wine industry with other segments of the State's economy such as tourism, retail trade, and horticulture;
(5) To conduct methods of quality assurance of North Carolina's grape and wine industry to create a sound foundation for further growth;
(6) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the grape and wine industry;
(7) To receive and disburse funds;
(8) To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;
(9) To contract for research services to improve viticultural and enological practices in North Carolina;
(10) To enter into agreements with any local, state, or national organizations or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;
(11) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina grape and wine industry;
(12) To acquire any licenses or permits necessary for performance of the duties of the Council; and
(13) To develop a State Viticulture Plan that identifies problems and constraints of the viticultural industry, proposes solutions to those problems and delineates planning mechanisms for the orderly growth of the industry.

"§ ~~106-751.~~143B-437.71. **North Carolina Grape Growers Council – Composition; terms; reimbursement.**

(a) The North Carolina Grape Growers Council shall consist of 11 members appointed by the ~~Commissioner of Agriculture~~Secretary of Commerce in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars ($10,000) worth of grapes annually. The ~~Commissioner~~ Secretary shall ~~appoint, within 30 days of the effective date of this act, four members for three-year terms, four members for two-year terms, and three members for one-year terms. Thereafter, members shall be appointed for~~appoint members for staggered four-year ~~terms and~~ terms. Members shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the Council may be removed by the ~~Commissioner~~ Secretary for misfeasance, malfeasance, or nonfeasance.

(b) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the operation of the Council.

(c) All clerical and other services required by the Council may be provided by the Department of ~~Agriculture and Consumer Services.~~Commerce.

(d) The ~~Commissioner of Agriculture~~Secretary of Commerce shall appoint a ~~chairman~~ chair who shall serve at the pleasure of the ~~Commissioner.~~Secretary.

(e) The Council may select a secretary who need not be a member of the Council.

(f) The Council shall meet when necessary as determined by the ~~chairman~~ chair or upon written request of a majority of the members.

(g) A majority of the Council shall constitute a quorum for the transaction of business."

SECTION 3.(b) Persons serving on the North Carolina Grape Growers Council as of the effective date of this Section shall continue to serve for the remainder of their unexpired terms. The Secretary of Commerce shall appoint members to the North Carolina Grape Growers Council as current terms expire and as vacancies arise.

SECTION 3.(c) G.S. 105-113.81A reads as rewritten:

"**§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.**

The Secretary shall on a quarterly basis credit to the Department of ~~Agriculture and Consumer Services~~Commerce the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, except that the amount credited to the Department of ~~Agriculture and Consumer Services~~Commerce under this section shall not exceed three hundred fifty thousand dollars ($350,000) per fiscal year. The Department of ~~Agriculture and Consumer Services~~Commerce shall allocate the funds received under this section to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. Any funds credited to the Department of ~~Agriculture and Consumer Services~~Commerce under this section that are not expended by June 30 of any fiscal year may not revert to the General Fund, but shall remain available to the Department for the uses set forth in this section."

SECTION 4. This act becomes effective July 1, 2005.

SENATE BILL 828:
Amend Wine Sales and Production Laws

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 24, 2005
Introduced by:	Sen. Hagan	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition S828-CSRU-40		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 828 would eliminate the one-time wine shippers application fee and would transfer the North Carolina Grape Growers Council from the Department of Agriculture to the Department of Commerce.***

CURRENT LAW: A person who wishes to ship wine into the State must apply for a wine shipper's permits and pay a $100 wine shipper permit fee. The North Carolina Grape Growers Council is currently created in the Department of Agriculture and Consumer Services. The NC Grape Growers Council is to promote and provide for the growth and development of NC's grape and wine industry. The Council is funded by $350,000 collected from the excise tax collected on unfortified wine bottled in NC.

BILL ANALYSIS:

Sections 1 and 2 would eliminate the $100 one-time wine shipper permit application fee and would eliminate the requirement of the payment of the fee with the application.

Section 3 would transfer the North Carolina Grape Growers Council from the Department of Agriculture and Consumer Services to the Department of Commerce. The Secretary of Commerce would replace the Commissioner of Agriculture as the appointing authority of members of the Council. The Secretary would appoint new members as current members' terms expire or as vacancies arise. The Department of Revenues is directed to pay the $350,000 annual payment from excise tax revenues collected on unfortified wine bottled in the State to the Department of Commerce instead of to the Department of Agriculture, for the benefit of the Council.

EFFECTIVE DATE: This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 828
PROPOSED COMMITTEE SUBSTITUTE S828-PCS75316-RU-40

Short Title: Amend Wine Sales and Production Laws. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE ONE-TIME WINE SHIPPERS' APPLICATION FEE, AND TO TRANSFER THE NORTH CAROLINA GRAPE GROWERS COUNCIL TO THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
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~~(36) Wine shipper permit – $100.00.~~"

SECTION 2. G.S. 18B-1001.1(a) reads as rewritten:

"(a) A winery holding a federal basic wine manufacturing permit located within or outside of the State may apply to the Commission for issuance of a wine shipper permit that shall authorize the shipment of brands of fortified and unfortified wines identified in the application. The applicant shall not be required to pay an application fee for the wine shipper permit. A wine shipper permittee may amend the brands of wines identified in the permit application but shall file any amendment with the Commission. Any winery that applies for a wine shipper permit shall notify in writing any wholesalers that have been authorized to distribute the winery's brands within the State that an application has been filed for a wine shipper permit. A wine shipper permittee may sell and ship not more than two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be lawfully sold. All sales and shipments shall be for personal use only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine."

SECTION 3.(a) Article 62 of Chapter 106 of the General Statutes is recodified as Part 2H of Article 10 of Chapter 143B of the General Statutes and reads as rewritten:

"~~Article 62.~~

"Part 2H. Grape Growers Council.

"§ ~~106-750.~~143B-437.70. **North Carolina Grape Growers Council – Creation; powers and duties.**

There is created the North Carolina Grape Growers Council of the Department of ~~Agriculture and Consumer Services.~~Commerce. The North Carolina Grape Growers Council shall have the following powers and duties:

(1) To identify and implement methods for improving North Carolina's rank as a wine-producing State;

(2) To assure orderly growth and development of North Carolina's grape and wine industry;
(3) To achieve public awareness of the quality of North Carolina grapes and wine;
(4) To coordinate the interaction of North Carolina's grape and wine industry with other segments of the State's economy such as tourism, retail trade, and horticulture;
(5) To conduct methods of quality assurance of North Carolina's grape and wine industry to create a sound foundation for further growth;
(6) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the grape and wine industry;
(7) To receive and disburse funds;
(8) To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;
(9) To contract for research services to improve viticultural and enological practices in North Carolina;
(10) To enter into agreements with any local, state, or national organizations or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;
(11) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina grape and wine industry;
(12) To acquire any licenses or permits necessary for performance of the duties of the Council; and
(13) To develop a State Viticulture Plan that identifies problems and constraints of the viticultural industry, proposes solutions to those problems and delineates planning mechanisms for the orderly growth of the industry.

"§ ~~106-751.~~143B-437.71. **North Carolina Grape Growers Council – Composition; terms; reimbursement.**

(a) The North Carolina Grape Growers Council shall consist of 11 members appointed by the ~~Commissioner of Agriculture~~Secretary of Commerce in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars ($10,000) worth of grapes annually. The ~~Commissioner~~ Secretary shall ~~appoint, within 30 days of the effective date of this act, four members for three-year terms, four members for two-year terms, and three members for one-year terms. Thereafter, members shall be appointed for~~appoint members for staggered four-year ~~terms and~~ terms. Members shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the Council may

be removed by the ~~Commissioner~~ Secretary for misfeasance, malfeasance, or nonfeasance.

(b) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the operation of the Council.

(c) All clerical and other services required by the Council may be provided by the Department of ~~Agriculture and Consumer Services.~~Commerce.

(d) The ~~Commissioner of Agriculture~~Secretary of Commerce shall appoint a ~~chairman~~ chair who shall serve at the pleasure of the ~~Commissioner.~~Secretary.

(e) The Council may select a secretary who need not be a member of the Council.

(f) The Council shall meet when necessary as determined by the ~~chairman~~ chair or upon written request of a majority of the members.

(g) A majority of the Council shall constitute a quorum for the transaction of business."

SECTION 3.(b) Persons serving on the North Carolina Grape Growers Council as of the effective date of this section shall continue to serve for the remainder of their unexpired terms. The Secretary of Commerce shall appoint members to the North Carolina Grape Growers Council as current terms expire and as vacancies arise.

SECTION 3.(c) G.S. 105-113.81A reads as rewritten:

"**§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.**

The Secretary shall on a quarterly basis credit to the Department of ~~Agriculture and Consumer Services~~Commerce the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, except that the amount credited to the Department of ~~Agriculture and Consumer Services~~Commerce under this section shall not exceed three hundred fifty thousand dollars ($350,000) per fiscal year. The Department of ~~Agriculture and Consumer Services~~Commerce shall allocate the funds received under this section to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. Any funds credited to the Department of ~~Agriculture and Consumer Services~~Commerce under this section that are not expended by June 30 of any fiscal year may not revert to the General Fund, but shall remain available to the Department for the uses set forth in this section."

SECTION 4. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 512

Short Title:	Electric Service Conflicts.	(Public)
Sponsors:	Senators Clodfelter; Apodaca, Holloman, Jenkins, Malone, and Tillman.	
Referred to:	Rules and Operations of the Senate.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE CORRIDOR RIGHTS OF ELECTRIC SUPPLIERS FROM EROSION DUE TO ANNEXATION OR INCORPORATION, TO CLARIFY THE RIGHTS OF PRIMARY AND SECONDARY SUPPLIERS OF ELECTRICITY TO SUPPLY ELECTRIC SERVICE WHEN THEIR DISTRIBUTION AND TRANSMISSION LINES ARE IN CLOSE PROXIMITY, TO PROHIBIT A CITY FROM CONDITIONING THE PROVISION OF WATER AND SEWER SERVICES TO VOLUNTARY ANNEXATION PETITIONERS UPON THE PETITIONERS AGREEING TO BE SUPPLIED WITH ELECTRICITY BY THE CITY, AND TO CREATE A MECHANISM TO FACILITATE THE RESOLUTION OF TERRITORIAL DISPUTES BETWEEN ELECTRICITY SUPPLIERS.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to electric service conflicts.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 512
PROPOSED COMMITTEE SUBSTITUTE S512-CSRU-39 [v.5]

5/24/2005 9:50:41 AM

Short Title: Electric Service Conflicts. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE PRACTICE OF CONDITIONING THE PROVISION OF WATER OR SEWER SERVICES UPON AGREEING TO BE SUPPLIED WITH ELECTRICITY, TO PRESERVE THE CORRIDOR SERVICE RIGHTS OF ELECTRIC SUPPLIERS OUTSIDE CITIES FROM BEING LOST OR DILUTED DUE TO EXTRATERRITORIAL SERVICES BY CITIES, AND TO ADDRESS OTHER ELECTRIC TERRITORY ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding new sections to read:

"**§ 75-39. Conditioning services on electric service prohibited.**

(a) No municipality or other provider of water or sewer services may offer, or agree to provide, extend, enhance or accelerate the provision of water or sewer services, or facilities or other municipal services or facilities, to any person in consideration of that person or another person agreeing to receive electric service from the municipality or another electric supplier.

(b) No municipality or other provider of water or sewer services may refuse to provide, or threaten or act to deny, delay or terminate the provision of, water or sewer services or facilities, or other municipal services or facilities, to any person as a result of, or in an attempt to influence, the choice of an electric supplier by that person or another person.

(c) A violation of this section by any municipality or other provider of water or sewer services shall constitute an unfair method of competition and an unfair act or practice under G.S. 75-1.1."

SECTION 2. G.S. 160A-331 reads as rewritten:

"**§ 160A-331. Definitions.**

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

...

(2) "Line" means any conductor located inside the ~~city~~ city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, ~~other than~~except as follows:

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such ~~premises, and~~premises.

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

...

(5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or more consumers other than itself within the limits of a ~~city~~ city, or that has a conductor located within 300 feet of an area annexed by a city that is ~~but is not~~ a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

SECTION 3. Part 2 of Article 16 of Chapter 160A of the General Statutes is amended by adding new sections to read:

"**§ 160A-331.1. Protection of certain corridors inside and outside cities.**

(a) Notwithstanding any other provisions of this Article, conductors used or to be used for the distribution or transmission of electricity by a city that is a primary supplier, which conductors are located or constructed outside the corporate limits of the city on or after June 30, 2005, shall be subject to the following additional restrictions:

(1) Such conductors cannot be used to serve any premises initially requiring electric service after June 30, 2005, which premises are located wholly or partially within 300 feet of any conductor used for the distribution or transmission of electricity by any electric supplier, as defined by G.S. 62-110.2, if the conductor of the electric supplier was constructed before the conductor of the city was constructed, or

replaces a conductor of the electric supplier that was constructed before the conductor of the city was constructed.

(2) Such conductors may be used to serve any premises initially requiring electric service after June 30, 2005, which premises are located wholly or partially within 300 feet of any conductor used for the distribution or transmission of electricity by any electric supplier, as defined in G.S. 62-110.2, but only if (i) the conductor of the city was constructed, or replaces a conductor that was constructed, before the conductor of the electric supplier was constructed, and (ii) the consumer chooses to use the electric services of the city to serve the premises.

(b) Notwithstanding any other sections of this Part, after annexation of all or any part of a conductor of an electric supplier, which conductor had restricted the provision of city electric service to premises outside the city under subdivision (a)(1) of this section, the city shall have no authority to initiate service to any premises located wholly or partially within 300 feet of the protected conductor of the affected electric supplier.

(c) Nothing in this section shall enlarge, reduce, alter or affect in any way the authority of a city that is a primary supplier to furnish electric service to city facilities, or to continue the provision of electric service to those premises being served by the city before June 30, 2005.

"**§ 160A-331.2. Agreements of electric suppliers.**

The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city."

SECTION 4. G.S. 160A-332(a) is amended by adding a new subdivision to read:

"(6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice that the consumer may be entitled to choose another electric supplier

for the premises, shall lose the right to initiate service to those premises."

SECTION 5. G.S. 160A-332 is amended by adding a new subsection to read:

"(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute that the provision of service by the current supplier is unlawful, the primary supplier or secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within thirty days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees."

SECTION 6. G.S. 117-10.2 reads as rewritten:

"**§ 117-10.2. Restriction on municipal service.**

Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-331.1, 160A-331.2, 160A-332, and 160A-333. ~~An~~ In addition, an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

SECTION 8. This act becomes effective July 1, 2005 and applies to areas for annexations that are commenced on or after that date.

SENATE BILL 512:
Electric Service Conflicts

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 24, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S512-CSRU-39		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 512 would prohibit the practice of conditioning the supplying of water and sewer services on the agreement by the area affected to be supplied with electricity. The bill would also protect corridor service rights of electric suppliers inside or outside of cities from being lost or diluted because the city provides extraterritorial services to the area.***

CURRENT LAW: Part 2 of Article 16 of Chapter 160A protects electric suppliers other than cities who were supplying electricity to certain customers prior to April 20, 1965 from being cutting out of the right to provide electric services when city electric service is available.

BILL ANALYSIS:

Section 1 of the bill amends Chapter 75 to make it an unfair method of competition and an unfair practice for a city that owns and operates an electric system to condition the provision of water or sewer services on an agreement to purchase electric services from the city.

Section 2 amends the definitions of "line" and "secondary supplier" to include conductors located within 300 feet of areas annexed by a city that is a primary supplier.

Section 3 amends the law that permits cities to provide electric services by adding a section that prohibits a city from supplying electric service in any area outside the city where electric service is supplied by another electric supplier as of June 30, 2005, or within 300 feet of an electric suppliers conductor. This section also prohibits a city from supplying electric service within 300 feet of an electric supplier conductor when the conductor is taken into the city by annexation. This section does not prohibit the city from supplying electricity to its own facilities or to facilities the city was serving as of June 30, 2005.

This Section also adds another statute to permit cities to enter into agreements with other electric suppliers to be allowed to provide electric services in areas each of the parties would otherwise not have been permitted to provide electric services. Agreements with electric suppliers that are subject to a territorial assignment jurisdiction of the Utilities Commission has to obtain approval of the Commission to any agreement entered into under this section. These agreements can apply to electric services supplied both inside and outside of the city.

Section 4 requires any electric supplier who supplies electric services in an area within a city where the consumer has the right to choose its electric supplier, to notify the consumer of the right to choose between electric suppliers. Failure to provide this notice results in the forfeiture of the right to initiate services to those premises.

Section 5 adds a new provision that requires an electric supplier who is supplying electricity in an area the supplier has no right to serve to cease providing services when notified by an electric supplier who does have a right to provide services in the area. If the electric supplier who is acting outside their authority fails to discontinue service, the supplier with the right to serve may bring an action to enforce

the obligation to cease services and may also recover the cost of enforcing the action, including attorneys' fees.

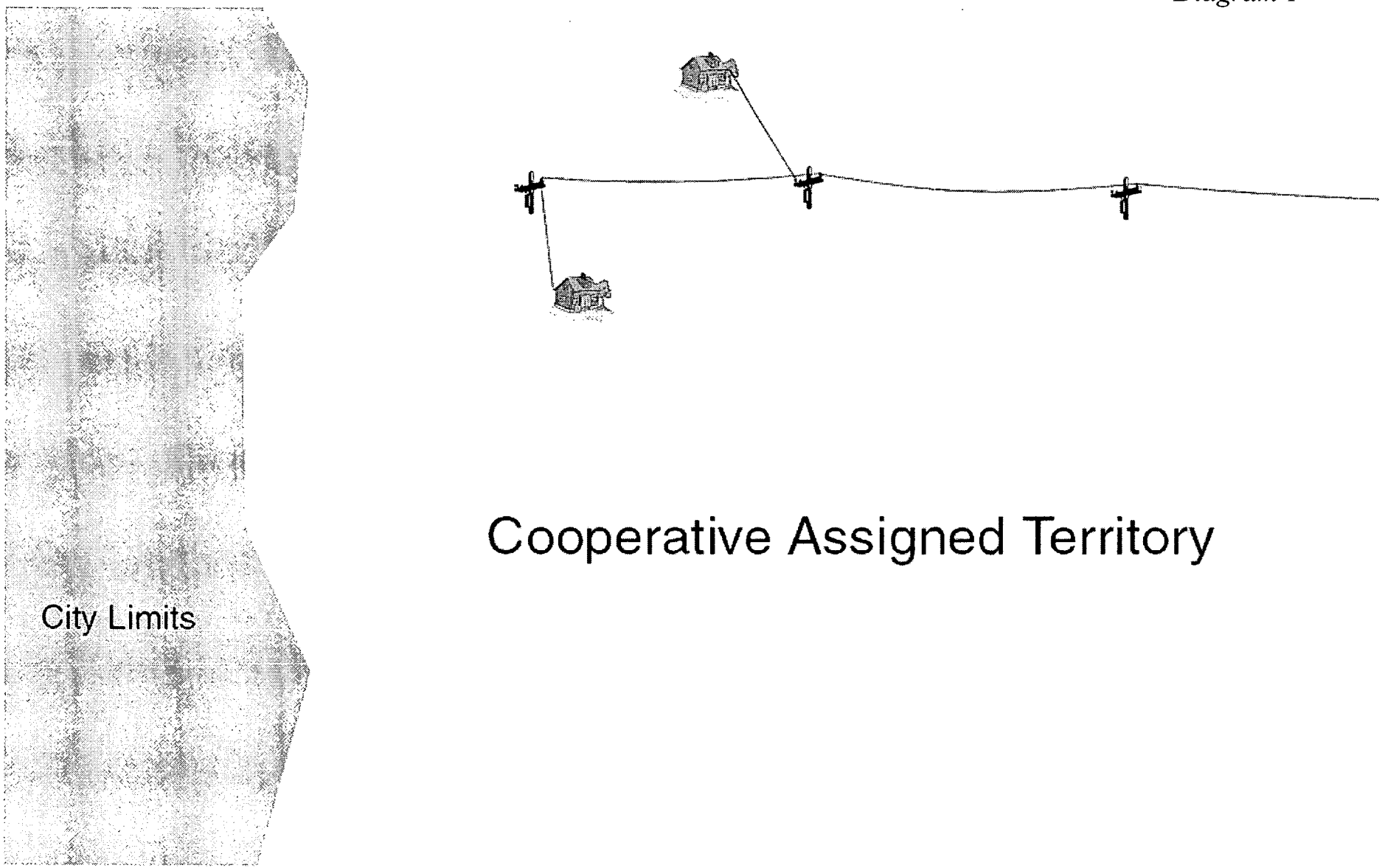
Section 6 amends the electric membership cooperative statute to make it clear that an EMC may provide electric services inside a city as otherwise is allowed any other electric supplier under this bill.

EFFECTIVE DATE: This act becomes effective July 1, 2005 and applies to areas for annexation that are commenced on or after that date.

Senate Bill 512 – Protecting cooperative investment in cooperative service territory

For decades, electric cooperatives have built power lines outside city limits and in rural areas to serve consumers. Since 1965, electric cooperatives have been obligated to serve all consumers in their service territory. In the diagram below, a cooperative power line runs through cooperative territory outside city limits.

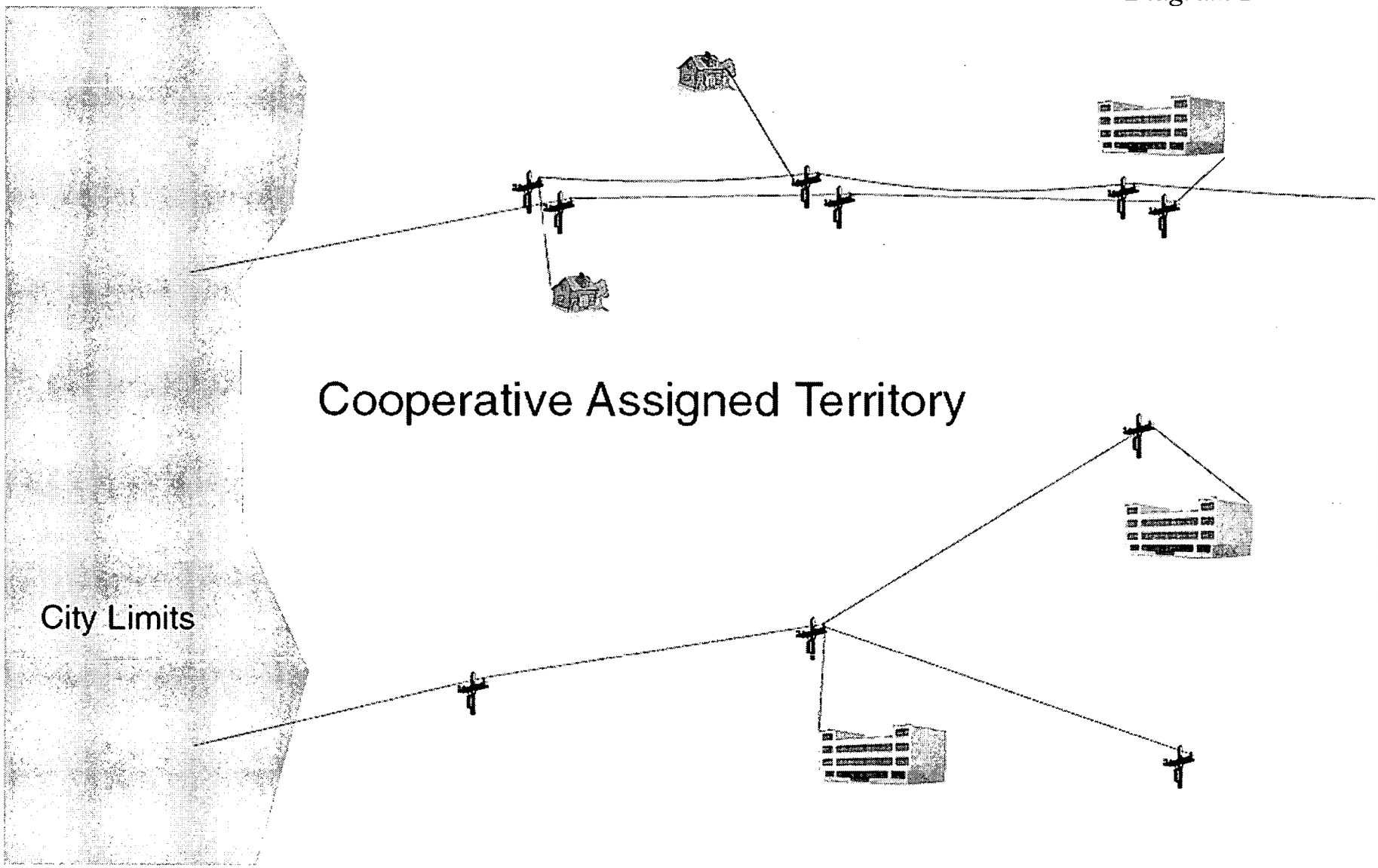
Diagram 1



No protection for investment outside cities

Under current law, electric cooperatives have no exclusive service rights to protect investments they are obligated to make. A municipal electric system may *voluntarily* build power lines and serve new consumers anywhere in electric cooperative service territory, often within a few feet of existing lines. In Diagram 2, the city has built power lines outside its city limits and into cooperative territory to serve new electric loads prior to annexation.

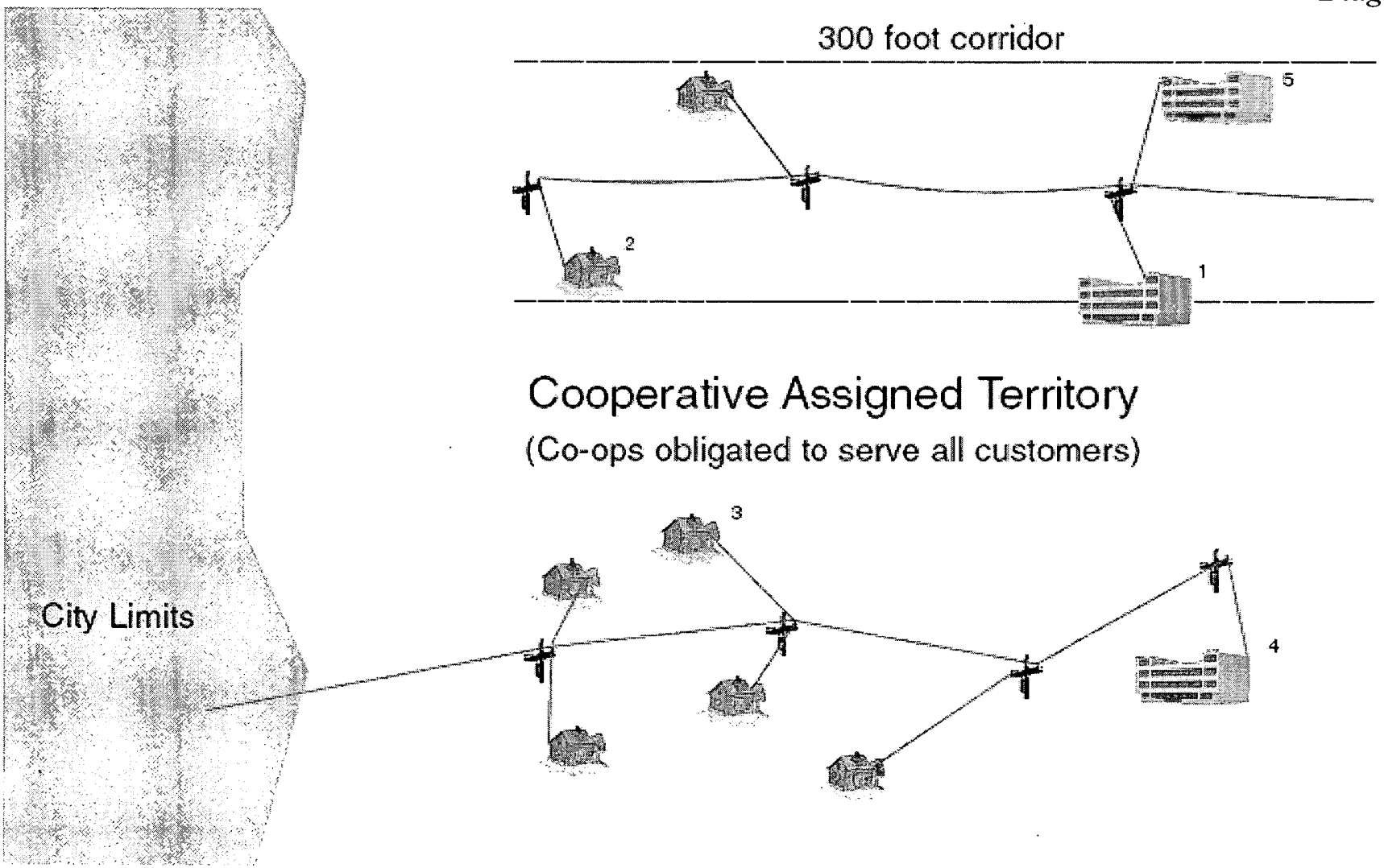
Diagram 2



Senate Bill 512 provides reasonable protection for investment

Under Senator Dan Clodfelter's legislation, municipal power providers will continue to expand their systems into electric cooperative and investor owned utility service territory outside city limits. But under the bill, cooperatives and IOUs will, as reasonable protection for obligated investments, retain 300-foot corridor rights for existing power lines in their territory and outside city limits. All areas outside the corridor rights and within reasonable limitations will be available for voluntary expansion by municipal systems, the same voluntary rights city systems have under current law.

Diagram 3



S 1

SENATE BILL 718

Short Title:	Modular Home Sales/Installation Requirements.	(Public)
Sponsors:	Senators Hoyle; and Bingham.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR SELLING AND INSTALLING MODULAR HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 9G.

"Modular Home Sales and Installation Requirements.

"**§ 143-151.70. Definitions.**

As used in this Article:

(1) "General contractor" means the same as defined in G.S. 87-1.

(2) "Installation contractor" means the same as defined in G.S. 143-143.9(13) and licensed under G.S. 143-143.11.

(3) "Manufactured home retailer or dealer" means the same as defined in G.S. 143-143.9(7) and licensed under G.S. 143-143.11.

(4) "Modular home" means a factory-built structure that is designed for use as a one- or two-family dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance under G.S. 143-139.1.

(5) "Modular home builder" means a person who furnishes for consideration a modular home to a purchaser who will occupy the modular home. The purchaser can be a person who will lease or rent the unit as real property.

"**§ 143-151.71. Selling and installation requirements.**

(a) A modular home builder doing business in this state shall be licensed as either a manufactured home retailer or a general contractor.

(b) Any person, other than a manufactured home retailer or general contractor, who undertakes to erect a modular home for compensation shall be licensed by the State as an installation contractor.

(c) An installation contractor who undertakes to erect a North Carolina labeled modular home shall comply with the manufacturer's installation instructions and applicable provisions of the State Building Code. Before securing a permit to erect a modular home, an installation contractor shall provide the code enforcement official proof that the contractor has in force, for each modular home to be erected, a five-thousand dollar ($5,000) surety bond insuring compliance with the provisions of the State Building Code governing the installation of modular homes. The bond shall cover installation of the home as defined in the manufacturer's installation requirements. The bond required by this subsection shall be in addition to the bond required by G.S. 143-143.12(4).

(d) A manufactured home retailer who undertakes to erect a North Carolina labeled modular home shall comply with the manufacturer's installation instructions and applicable provisions of the State Building Code. Before securing a permit to erect a modular home, a manufactured home retailer shall have in force, for each modular home to be erected, a five-thousand dollar ($5,000) surety bond insuring compliance with the provisions of the State Building Code governing the installation of modular homes. The bond shall cover installation of the home as defined in the manufacturer's installation requirements. The bond required by this subsection shall be in addition to the bond required by G.S. 143-143.12(2) and (3).

(e) With respect to a manufactured home retailer who is a modular home builder, the bonds required by G.S. 143-143(2) and (3) shall also be conditioned on the retailer complying with all requirements governing the sale of modular homes. Any buyer of a modular home who suffers any loss or damage by any act of a dealer that constitutes a violation of any requirements governing the sale of modular homes may institute an action to recover against the dealer and the surety.

(f) With respect to an installation contractor who undertakes to erect modular homes, the bond required by G.S. 143-143.12(4) shall also be conditioned on the contractor complying with all requirements governing the erecting of modular homes. Any buyer of a modular home who suffers any loss or damage by an act of an installation contractor that constitutes a violation of requirements governing the erecting of modular homes may institute an action to recover against the contractor and the surety.

(g) In erecting a modular home, any person undertaking to provide additional, on-site constructed improvements to the modular home, or to the property on which the modular home is situated, shall be licensed as a general contractor if the amount of the undertaking exceeds the amount established in G.S. 87-1.

(h) A complaint by a buyer of a modular home that arises out of the sale or installation of the modular home shall be filed with the Manufactured Housing Board if the complaint is against a manufactured home retailer or installation contactor and the name and license number of the dealer or installation contractor appears on the building permit.

(i) A complaint by a buyer of a modular home that arises out of the sale or installation of a modular home shall be filed with the State Licensing Board for General Contractors if the complaint is against a general contractor and the name and license number of the general contractor appears on the building permit."

SECTION 2. G.S. 143-139.1(a) reads as rewritten:

"(a) Certification. – The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest ~~which~~ that might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

~~The Building Code Council may also adopt rules to insure that any person that is not licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina labeled manufactured modular building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect a modular building, shall provide the code enforcement official proof that he has in force for each modular building to be erected a $5,000 surety bond insuring compliance with the regulations of the State Building Code governing installation of modular buildings.~~"

SECTION 3. This act becomes effective January 1, 2006.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Smith	Four County Electric Membership Corporation P.O. Box 667 Burgaw, NC 28425
Joe Eason	Nelson Mullins
Bob Schwentker	NC Assoc. of Elec. Cooperatives
	NC Assoc of Cooperatives
Andrew Meehan	"
Nelle Hotchkiss	NC Assoc. of Electric Coops
	NMRS'
Tim Holder	Energy United
Luann Sherron	Union Power Cooperative Monroe, N.C.
Chip Killian	nelson mullins / NCAEC
John Molloy	Gov office
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

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Sharon Miller	CUCA
Chad Essick	Poyner + Spruill, LLP
DAVID BARNES	Poyner Spruill
Joyce Peters	AP&SOL
Dwight Allen	Smith Anderson
Kathleen Edwards	UNC-CH Legis. Reporting Service
	JD, AL, PA
	SA
Bee Wedington	NC-AR1
Bob Bennink	NCUC staff
Sam Kirby	"
	ICCH

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2005

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	MTS
Lobbi Valauri	NC Beer & Wine
John Long	Martin Marietta
Bill Rowe	NC Justice Center
J. MICHAEL WILSON	TOWN OF APEX
MICHAEL S. COBB	Poyner & Spruill LLP for ElectriCities
Jeanne Bonds	ElectriCities
Estheine Davis	ElectriCities
[illegible]	Poyner & Spruill
Vivian Jones	Town of Wake Forest
Bob Gillam	Public Staff - NCUC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

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Lori Ann Harris	LAHA
Carolyn Childers	NCEMC
Donnie Spivey	Pee Dee Electric, Wadesboro, NC
Tripp Melton	Sen Stevens Office
Hubert Britton	Brunswick EMC
Calvin Duncan	" "
CHIP LEAVITT	" "
Andy Romanet	NCLM
Michael A. Thompson	Dominion NC Power
Pam Wescott	Sprint
Tom Moore	

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kelly Daniels	Capitol Group
Eddie Baysden	Rocky Mount Area Chamber of Commerce
Doug Howey	NCPMA
Gary Harris	NCPMA
Ken Melton	D.O.R.
Katherine W. Joyce	NCASA
Beau Mills	NC Metropolitan Coalition
Len Anthony	Progress Energy
Jason Brady	City of Fayetteville
John Goodman	Aller Associates

Senate Commerce Committee
Thursday, May 26, 2005, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 441	Ashe Co./ Wind-Powered Generation.	Senator Garwood
SB 512	Electric Service Conflicts.	Senator Clodfelter
SB 718	Modular Home Sales/Installation Requirements.	Senator Hoyle
SB 895	Real Estate Trust Monies.	Senator Rand

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, May 26, 2005 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on Thursday, May 26, 2005, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages: Seth Averette of Lillington, sponsored by Senator John Kerr; Brent Longmire of Angier, also sponsored by Senator Kerr; and Austin Bradshaw of Gastonia, Ashley Quarles of Gastonia, Josh Richardson of Kings Mountain and Sara Fender of Gastonia, all sponsored by Senator David Hoyle.

Senator Soles recognized Senator Hoyle to present SB 718, Modular Home Swales/Installation Requirements. Senator Apodaca moved adoption of a committee substitute for purposes of discussion. The motion carried. Senator Hoyle moved the adoption of a technical amendment. The motion carried. Senator William Purcell asked for an explanation of the differences between the original bill and the committee substitute. Ms. Wendy Ray, Committee Counsel, explained the differences. Senator Soles called on Mr. Steve Snyder, Modular Building Systems Association, who represents six modular home manufacturers in North Carolina (see attached for a handout of his remarks). Senator Hoyle called on Mr. Frank Gray, representing the North Carolina Manufactured Housing Association, who explained the reasons and background of the bill. Senator Hoyle requested the bill be withdrawn from consideration for more study.

Senator Soles recognized Senator John Garwood to present SB 441, Ashe Co./Wind-Powered Generation. Senator Phil Berger moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Garwood explained the bill, and recognized Mr. Dan McMillan, County Manager of Ashe County, Dennis Grady, Director of the Appalachian State University Energy Center, and Ms. Cole McVey, Appalachian State University Energy Center. He requested that Mr. McMillan speak on the background and purpose of the bill. Senator Martin Nesbitt moved an unfavorable report of the committee substitute. The motion carried.

Senator Soles announced there was still work to be done on SB 512, Electric Service Conflicts. Senator Rand was not available to present SB 895, Real Estate Trust Monies.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 718

Short Title:	Modular Home Sales/Installation Requirements.	(Public)
Sponsors:	Senators Hoyle; and Bingham.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR SELLING AND INSTALLING MODULAR HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 9G.

"Modular Home Sales and Installation Requirements.

"**§ 143-151.70. Definitions.**

As used in this Article:

(1) "General contractor" means the same as defined in G.S. 87-1.

(2) "Installation contractor" means the same as defined in G.S. 143-143.9(13) and licensed under G.S. 143-143.11.

(3) "Manufactured home retailer or dealer" means the same as defined in G.S. 143-143.9(7) and licensed under G.S. 143-143.11.

(4) "Modular home" means a factory-built structure that is designed for use as a one- or two-family dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance under G.S. 143-139.1.

(5) "Modular home builder" means a person who furnishes for consideration a modular home to a purchaser who will occupy the modular home. The purchaser can be a person who will lease or rent the unit as real property.

"**§ 143-151.71. Selling and installation requirements.**

(a) A modular home builder doing business in this state shall be licensed as either a manufactured home retailer or a general contractor.

(b) Any person, other than a manufactured home retailer or general contractor, who undertakes to erect a modular home for compensation shall be licensed by the State as an installation contractor.

(c) An installation contractor who undertakes to erect a North Carolina labeled modular home shall comply with the manufacturer's installation instructions and applicable provisions of the State Building Code. Before securing a permit to erect a modular home, an installation contractor shall provide the code enforcement official proof that the contractor has in force, for each modular home to be erected, a five-thousand dollar ($5,000) surety bond insuring compliance with the provisions of the State Building Code governing the installation of modular homes. The bond shall cover installation of the home as defined in the manufacturer's installation requirements. The bond required by this subsection shall be in addition to the bond required by G.S. 143-143.12(4).

(d) A manufactured home retailer who undertakes to erect a North Carolina labeled modular home shall comply with the manufacturer's installation instructions and applicable provisions of the State Building Code. Before securing a permit to erect a modular home, a manufactured home retailer shall have in force, for each modular home to be erected, a five-thousand dollar ($5,000) surety bond insuring compliance with the provisions of the State Building Code governing the installation of modular homes. The bond shall cover installation of the home as defined in the manufacturer's installation requirements. The bond required by this subsection shall be in addition to the bond required by G.S. 143-143.12(2) and (3).

(e) With respect to a manufactured home retailer who is a modular home builder, the bonds required by G.S. 143-143(2) and (3) shall also be conditioned on the retailer complying with all requirements governing the sale of modular homes. Any buyer of a modular home who suffers any loss or damage by any act of a dealer that constitutes a violation of any requirements governing the sale of modular homes may institute an action to recover against the dealer and the surety.

(f) With respect to an installation contractor who undertakes to erect modular homes, the bond required by G.S. 143-143.12(4) shall also be conditioned on the contractor complying with all requirements governing the erecting of modular homes. Any buyer of a modular home who suffers any loss or damage by an act of an installation contractor that constitutes a violation of requirements governing the erecting of modular homes may institute an action to recover against the contractor and the surety.

(g) In erecting a modular home, any person undertaking to provide additional, on-site constructed improvements to the modular home, or to the property on which the modular home is situated, shall be licensed as a general contractor if the amount of the undertaking exceeds the amount established in G.S. 87-1.

(h) A complaint by a buyer of a modular home that arises out of the sale or installation of the modular home shall be filed with the Manufactured Housing Board if the complaint is against a manufactured home retailer or installation contactor and the name and license number of the dealer or installation contractor appears on the building permit.

(i) A complaint by a buyer of a modular home that arises out of the sale or installation of a modular home shall be filed with the State Licensing Board for General Contractors if the complaint is against a general contractor and the name and license number of the general contractor appears on the building permit."

SECTION 2. G.S. 143-139.1(a) reads as rewritten:

"(a) Certification. – The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest ~~which~~ that might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

~~The Building Code Council may also adopt rules to insure that any person that is not licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina labeled manufactured modular building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect a modular building, shall provide the code enforcement official proof that he has in force for each modular building to be erected a $5,000 surety bond insuring compliance with the regulations of the State Building Code governing installation of modular buildings.~~"

SECTION 3. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 718
PROPOSED COMMITTEE SUBSTITUTE S718-CSSU-18 [v.2]

5/25/2005 6:58:04 PM

Short Title: Modular Home Sales/Installation Requirements. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR SELLING AND INSTALLING MODULAR HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 9G.

"Modular Home Sales and Installation Requirements.

"**§ 143-151.70. Definitions.**

The following definitions apply in this Article:

(1) General contractor. - As defined in G.S. 87-1.

(2) Installation contractor. - Aas defined in G.S. 143-143.9(13) and licensed under G.S. 143-143.11.

(3) Manufactured home retailer or dealer. - As defined in G.S. 143-143.9(7) and licensed under G.S. 143-143.11.

(4) Modular home. - A factory-built structure that is designed for use as a one or two family dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Code, and bears a seal or label issued by the Department of Insurance under G.S. 143-139.1.

(5) Modular homebuilder. - A person who for consideration sells or delivers a modular home to a purchaser for initial occupancy. This term shall not include (i) a real estate broker or salesperson licensed under Chapter 93A of the General Statutes, or (ii) any person who installs or erects a modular home on land owned by that person, provided the home is intended solely for occupancy by that person or that person's family after completion.

"**§ 143-151.71. Selling and installation requirements.**

(a) A modular homebuilder doing business in this State shall be licensed as either a manufactured home retailer or a general contractor.

(b) Any person, other than a manufactured home retailer or general contractor, who undertakes to erect a modular home for compensation shall be licensed by the State as an installation contractor.

(c) An installation contractor who undertakes to erect a North Carolina labeled modular home shall comply with the manufacturer's installation instructions and applicable provisions of the State Building Code. Before securing a permit to erect a modular home, an installation contractor shall provide the code enforcement official proof that the contractor has in force, for each modular home to be erected, a five thousand dollar ($5,000) surety bond insuring compliance with the provisions of the State Building Code governing the installation of modular homes. The bond shall cover installation of the home as defined in the manufacturer's installation requirements. The bond required by this subsection shall be in addition to the bond required by G.S. 143-143.12(a)(4).

(d) A manufactured home retailer who undertakes to erect a North Carolina labeled modular home shall comply with the manufacturer's installation instructions and applicable provisions of the State Building Code. Before securing a permit to erect a modular home, a manufactured home retailer shall have in force, for each modular home to be erected, a five thousand dollar ($5,000) surety bond insuring compliance with the provisions of the State Building Code governing the installation of modular homes. The bond shall cover installation of the home as defined in the manufacturer's installation requirements. The bond required by this subsection shall be in addition to the bond required by G.S. 143-143.12(a)(2) and (3).

(e) With respect to a manufactured home retailer who is a modular homebuilder, the bonds required by G.S. 143-143(a)(2) and (3) shall also be conditioned upon the retailer complying with all requirements governing the sale of modular homes. Any buyer of a modular home who suffers any loss or damage by any act of a dealer that constitutes a violation of any requirements governing the sale of modular homes may institute an action to recover against the dealer and the surety.

(f) With respect to an installation contractor who undertakes to erect modular homes, the bond required by G.S. 143-143.12(a)(4) shall also be conditioned upon the contractor complying with all requirements governing the erecting of modular homes. Any buyer of a modular home who suffers any loss or damage by an act of an installation contractor that constitutes a violation of requirements governing the erecting of modular homes may institute an action to recover against the contractor and the surety.

(g) In erecting a modular home, any person undertaking to provide additional, on-site constructed improvements to the modular home, or to the property on which the modular home is situated, shall be licensed as a general contractor if the amount of the undertaking exceeds the amount established in G.S. 87-1.

(h) A complaint by a buyer of a modular home that arises out of the sale or installation of the modular home shall be filed with the Manufactured Housing Board if the complaint is against a manufactured home retailer or installation contractor.

(i) A complaint by a buyer of a modular home that arises out of the sale or installation of a modular home shall be filed with the State Licensing Board for General Contractors if the complaint is against a general contractor and the name and license number of the general contractor appears on the building permit."

SECTION 2. G.S. 87-2 reads as rewritten:

"**§ 87-2. Licensing Board; organization.**

There is created the State Licensing Board for General Contractors consisting of ~~nine~~ 10 members appointed by the Governor for staggered five-year terms. Five of the members shall be general contractors, one member shall be a modular homebuilder as defined in G.S. 143-151.70(5), one member shall be a registered engineer who practices structural engineering, and three shall be public members. Of the general contractor members, one shall have as the larger part of his business the construction of highways; one shall have as the larger part of his business the construction of public utilities; one shall have as the larger part of his business the construction of buildings; and two shall have as a larger part of their businesses the construction of residences, one of whom shall be the holder of an unlimited general contractor's license. The public members shall have no ties with the construction industry and shall represent the interests of the public at large. Members shall serve until the expiration of their respective terms and until their successors are appointed and qualified. Vacancies occurring during a term shall be filled by appointment of the Governor for the remainder of the unexpired term. The Governor may remove any member of the Board for misconduct, incompetency, or neglect of duty. No Board member shall serve more than two complete consecutive terms."

SECTION 3. G.S. 143-139.1(a) reads as rewritten:

"(a) Certification. – The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest ~~which~~ that might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the

posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

The Building Code Council may also adopt rules to insure that any person that is not licensed, in accordance with G.S. 87 1, and that undertakes to erect a North Carolina labeled manufactured modular commercial building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect a commercial modular building, shall provide the code enforcement official proof that he has in force for each commercial modular building to be erected a ~~$5,000~~ five thousand dollar ($5,000) surety bond insuring compliance with the regulations of the State Building Code governing installation of commercial modular buildings."

SECTION 4. Nothing in Section 2 of this act shall affect the terms and memberships on the State Licensing Board for General Contractors in effect on the effective date of this act.

SECTION 5. This act becomes effective January 1, 2006.

SENATE BILL 718:
Modular Home Sales/Installation Requirements

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 26, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Wendy Graf Ray
Version:	PCS to First Edition S718-CSSU-18		Committee Counsel

SUMMARY: Senate Bill 718 would require modular home builders to be licensed as manufactured home retailers or general contractors, and anyone else erecting a modular home to be licensed as an installation contractor.

CURRENT LAW: Under G.S. 87-1, a general contractor is a person who, for compensation, constructs any building or structure where the cost is $30,000 or more, or undertakes to erect a North Carolina labeled manufactured modular building. However, G.S. 143-139.1 (which provides for certification and labeling of manufactured buildings) provides an exemption from general contractor licensing requirements for any person who erects a labeled manufactured modular building if he or she provides proof of a $5,000 surety bond for each modular building to be erected insuring compliance with the State Building Code. Even if installation costs exceed $30,000, the exemption applies if the person provides the required surety bond.

Article 9A of Chapter 143 of the General Statutes sets out licensing requirements for manufactured home dealers and set-up contractors, but that article does not include modular home builders. Manufactured home dealers are required to furnish surety bonds in the amount of $35,000 for one place of business and $25,000 for each additional place of business, and set-up contractors are required to furnish surety bonds in the amount of $10,000. The bonds are conditioned upon the obligor complying with provisions of Article 9A.

BILL ANALYSIS: Senate Bill 718 would require a modular home builder in North Carolina to be licensed as a manufactured home retailer or a general contractor. Any other person who undertakes to erect a modular home would have to be licensed as an installation contractor. If installation costs exceed $30,000, the person erecting the modular home would have to be licensed as a general contractor.

Manufactured home retailers and installation contractors would have to provide proof of a $5,000 surety bond for each modular building to be erected, in addition to the bonds required under Article 9A, and the bonds required under Article 9A would also be conditioned on the retailer or contractor complying with requirements governing the sale and installation of modular homes.

A complaint arising out of the sale or installation of a modular home would have to be filed with the appropriate licensing board.

The bill would also add one member to the State Licensing Board for General Contractors (currently consists of nine members). The additional member would have to be a modular homebuilder.

EFFECTIVE DATE: The bill would become effective January 1, 2006.

S0718e1-SMSU-CSSU-18

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE May 26, 2005

S. B. No. 718 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.)
Sen.) HOYLE

1 moves to amend the bill on page 1, line 12, line _____

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "Aas" and substituting "As".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MODULAR BUILDING SYSTEMS ASSOCIATION
BUILDING FOR TOMORROW

3029 North Front Street
Third Floor
Harrisburg, PA 17110
Phone: (717) 238-9130
Fax: (717) 238-9156
Web: www.modularhousing.com

TESTIMONY BEFORE THE SENATE COMMITTEE ON COMMERCE REGARDING SB 718 ON BEHALF OF THE MODULAR BUILDING SYSTEMS ASSOCIATION

May 26, 2005

1) Modular Home Sales Licensing

Senate Bill 718 would require that in order to sell a modular home the seller must hold either a general contractors license (under G.S. 87-1 *et. seq.*) or a manufactured home dealer license (under G.S. 143-143.11). This language will allow manufactured housing dealers to sell modular homes without a general contractor's license.

The modular homes built today have become increasingly complex and the requirements for a licensed manufactured home retailer do not ensure that a dealer is qualified to properly complete the home. The MBSA believes that anyone selling modular homes in the State of North Carolina should be a licensed contractor and have the same skills and qualifications as a conventional site builder.

2) Consumer Complaints

Jurisdiction for complaints regarding modular homes that were sold by a manufactured home dealer or installed by an installation contractor (G.S. 143-143.9(13)) would be directed to the state Manufactured Housing Board. Complaints arising from homes sold by a general contractor would continue to be directed to the State Licensing Board.

This is bad public policy and very confusing to the consumer who may not know what type of license is held by the seller. The Bill would establish two conflicting oversight agencies, create confusion among consumers and result in different standards for the resolution of a conflict depending on who sold the home. The MBSA opposes the creation of such a bifurcated complaint system as it will impede consumer confidence in our product and create needless consumer confusion.

3) Manufactured Home Retailer Bonding Requirement

The Bill requires manufacturing home retailers and installation contractors to secure a bond in case there is a problem with the completion of the house. A licensed general contractor would not be required to provide a bond. The bonding requirement does not ensure that the manufactured home retailer is qualified to properly complete the house. The bond just provides money if there is a problem.

We are committed to ensuring that a modular builder is qualified to complete the house. Simply requiring a pool of money in the event that a manufactured home retailer causes loss or damage to the consumer, is not in the consumers' best interest. Moreover, this approach reflects poorly on the modular housing industry.

Contact: **Steven R. Snyder, Esquire**
Executive Director

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 441

Short Title:	Ashe Co./ Wind-Powered Generation.	(Local)
Sponsors:	Senator Garwood.	
Referred to:	Commerce.	

March 9, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING ASHE COUNTY TO USE WIND-POWERED ELECTRICITY GENERATION PROJECTS ON MOUNTAIN RIDGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-206 reads as rewritten:

"**§ 113A-206. Definitions.**

Within the meaning of this Article:

...

(3) "Tall buildings or structures" include any building, structure or unit within a multiunit building with a vertical height of more than 40 feet measured from the top of the foundation of said building, structure or unit and the uppermost point of said building, structure or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. "Tall buildings or structures" do not include:

a. Water, radio, telephone or television towers or any ~~equipment~~ equipment, including wind-powered electricity generators, for the generation or transmission of electricity or communications or both."

SECTION 2. This act applies to Ashe County only.

SECTION 3. This act is effective when it becomes law.

SENATE BILL 441:
Wind-Powered Generation

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 26, 2005
Introduced by:	Sen. Garwood	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S441-CSRU-34		Committee Co-Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 441 would amend the Mountain Ridge Protection Act to permit the construction of wind-powered generation systems under certain circumstances.

CURRENT LAW: Current law allows local governments to adopt ordinances governing the development of certain tall buildings on mountain ridges in order to protect the environment and esthetics of the mountain ridge. A mountain ridge is defined as the top 100 feet of a peak that is 3000 feet elevation, more than 500 feet above the adjacent valley floor. Exempted from the definition of tall buildings are water, radio, telephone or television towers or equipment for the transmission of electricity or communications, and structures of a slender nature including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires and windmills.

BILL ANALYSIS:

Section 1 of the bill adds definitions to the Mountain Ridge Protection Act. It defines "small wind energy system" (a system that generate less than 100kW of power, are 150 feet tall or less, and have a rotor diameter of 80 feet or less), "utility scale wind energy system" (wind conversion system capable of generating more than 100kW of power), and "windmills" (wind powered generator for mechanical or electrical energy production.

Section 2 sets out the procedure for the approval of small wind energy systems and utility scale wind energy systems under the Mountain Ridge Protection Act.

G.S. 113A-209.1 allows a small wind energy system permit to be issued for a wind turbine system that meets the criteria set out in this section, including a maximum height of 150 feet, noise generated to no more than 5 decibels above background noise measured from the nearest residence for wind speeds below 22 mph, and compliance with all building codes, electrical codes and Federal Aviation Authority regulations.

G.S. 113A-209.2 sets out the permitting process for the construction of a utility scale wind power project. These projects may only be build in counties that have Class 4 or higher wind density (wind speeds between 14 and 15.7 mph), are either a Tier 1, 2, or 3 county under the William S. Lee Act, have a population density of 80 persons or less per square mile, and have adopted an ordinance by August 31, 2005 authorizing the permitting of these types of systems. The permitting process requires compliance with any certificate of need requirements of the Utilities Commission, a one-year environmental impact analysis, and a plan for decommissioning the project. The county is required to give public notice of a permit application and hold a public hearing prior to granting a permit.

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

§ 113A-206. Definitions.

Within the meaning of this Article:

(1) The word "person" includes any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

(2) A person, as defined in this section, doing business or maintaining an office within a county is a resident of the county.

(3) "Tall buildings or structures" include any building, structure or unit within a multiunit building with a vertical height of more than 40 feet measured from the top of the foundation of said building, structure or unit and the uppermost point of said building, structure or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. "Tall buildings or structures" do not include:

a. Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both.

b. Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills.

c. Buildings and structures designated as National Historic Sites on the National Archives Registry.

(4) "Construction" includes reconstruction, alteration, or expansion.

(5) "Ridge" means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

(6) "Protected mountain ridges" are all mountain ridges whose elevation is 3,000 feet and whose elevation is 500 or more feet above the elevation of an adjacent valley floor; provided, however, that a county, or a city with a population of fifty thousand (50,000) or more, may elect to eliminate the requirement for an elevation of 3,000 feet, and such election shall apply both to an ordinance adopted under G.S. 113A-208 and the prohibition against construction under G.S. 113A-209; provided, further, that such ordinance shall be adopted pursuant to the procedures of G.S. 113A-208.

(7) "Crest" means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

§ 113A-207. Legislative findings.

The construction of tall or major buildings and structures on the ridges and higher elevations of North Carolina's mountains in an inappropriate or badly designed manner can cause unusual problems and hazards to the residents of and to visitors to the mountains. Supplying water to, and disposing of the sewage from, buildings at high elevations with significant numbers of residents may infringe on the ground water rights and endanger the health of those persons living at lower elevations. Providing fire protection may be difficult given the lack of water supply and pressure and the possibility that fire will be fanned by high winds. Extremes of weather can endanger buildings, structures, vehicles, and persons. Tall or major buildings and structures located on ridges are a hazard to air navigation and persons on the ground and detract from the natural beauty of the mountains.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 441
PROPOSED COMMITTEE SUBSTITUTE S441-CSRU-34 [v.6]

5/25/2005 5:56:52 PM

Short Title: Wind-Powered Generation. (Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE USE OF WIND-POWERED ELECTRICITY GENERATION PROJECTS ON MOUNTAIN RIDGES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-206 reads as rewritten:

"**§ 113A-206. Definitions.**

Within the meaning of this Article:

...

(8) "Small wind energy system" is a wind turbine system consisting of a wind turbine, tower, and associated control or conversion electronics, which has a rated capacity of not more than 100kW, a total height from ground level to the tip of the rotor at its highest point of 150 feet or less, and a rotor diameter of 80 feet or less.

(9) "Utility scale wind energy system" is any individual or group of individual wind conversion systems, consisting of a wind turbine, tower, and associated control or conversion electronics, which has a rated capacity greater than 100kW.

(10) "Windmills" includes any wind-powered generator for either mechanical or electrical energy production."

SECTION 2. Article 14 of Chapter 113A is amended by adding the following new sections to read:

"**§ 113A-209.1. Small wind energy systems.**

(a) Small wind energy systems that comply with the provisions of subsection (b) of the section shall be permitted as an allowable use by right under this Article.

(b) The following standards and restrictions shall apply for small wind energy systems authorized under this section:

(1) Minimum parcel size of one acre.

(2) Maximum allowable tower heights of 150 feet.
(3) Setbacks no closer than one and one-half times the total length of the turbine tower to the property boundary, as measured from the base of the tower to the fully extended blade tip.
(4) The mean value of the sound pressure level from a small wind energy system shall not exceed more than 5 decibels above background noise, as measured at the exterior of the closest neighboring inhabited dwelling, for wind speeds below 22 mph (10m/s) and except during short-term events including utility outages and severe wind storms.
(5) Automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure in the tower structure, rotor blades, and turbine components or enclosed shelter.
(6) Lightning protection.
(7) Compliance with the Uniform Building Code where applicable with standard drawings and certification by a licensed engineer or manufacturer. Wet stamp is not required.
(7) Compliance with the National Electric Code with sufficient detail line drawings of electrical components.
(8) Notification of the utility of intent to install an interconnected wind generator.
(9) Compliance with the Federal Aviation Authority requirements. Small wind energy systems shall not be artificially lighted except as required by the Federal Aviation Authority.

(c) No other local ordinance, policy, or regulation shall be the basis to deny the siting and operation of a small wind energy system. Small wind energy systems shall not be subject to further permitting procedures as set forth in G.S. 113-209.2. Small wind energy systems that do not meet the criteria set forth in this section shall require a conditional use permit.

(d) The county may charge a small wind energy system-permitting fee of fifty dollars ($50.00).

"**§ 113A-209.2. Utility scale wind power projects.**

(a) Projects shall be permitted under this Article in accordance with this section when the project is located in a county that meets all of the following criteria:
(1) Demonstrates Class 4 or higher wind power density, between 14 mph (6.4 m/s) and 15.7 mph (7 m/s).
(2) Is designated as a Tier 1, 2, or 3 county under G.S. 105-129.3.
(3) Has a population density equal to or less than 80 persons per square mile according to the 2000 federal census.
(4) Is in a county that as of August 31, 2005 has adopted an ordinance permitting wind-powered generation projects in accordance with this section.

(b) A person seeking a site permit for a project shall file three copies of the application for the site permit with the county planning board for review prior to

acceptance of the application. A person filing an application for a site permit for a project shall provide the county planning board with a copy of the application in a format requested by the county commission, suitable for posting on the county government website. An applicant may request that the county planning board waive this requirement completely or for part of the application if an electronic version of the application is difficult or expensive for the applicant to obtain. An applicant for a site permit for a wind-powered generation project may certify that certain information in the application is trade secret information or other protected data or information that is not available to the public.

(c) An applicant for a site permit must provide the following background information regarding the applicant:

(1) A letter of transmittal signed by an authorized representative or agent of the applicant.

(2) The complete name, address, and telephone number of the applicant and any authorized representative.

(3) The signature of the person who prepared the application, if prepared by an agent or consultant of the applicant.

(4) The role of the permit applicant in the construction and operation of the project.

(5) The identity of any other project located in the State in which the applicant, or a principal of the applicant, has an ownership or other financial interest; the operator of the project if different from the applicant; and the name of the person or persons to be the permittee if a site permit is issued.

(d) The applicant shall state in the application whether a certificate of need for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule for obtaining the certificate of need. The board of commissioners shall not issue a site permit for a project for which a certificate of need is required until the applicant obtains the certificate, although the county planning board may process the application while the certificate of need request is pending before the Utilities Commission. The county planning board may ask the Utilities Commission to determine whether a certificate of need is required for a particular project for which the county planning board has received a site permit application. If a certificate of need is not required from the Utilities Commission, the permit applicant shall include with the application a discussion of what the applicant intends to do with the power that is generated. If the applicant has a power purchase agreement or some other enforceable mechanism for sale of the power to be generated by the project, the applicant shall provide the county planning board with a copy of the document upon the request.

(e) The applicant shall describe in the application how the proposed project furthers State policy to site such projects in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

(f) The permit applicant shall include the following information about the site proposed for the project and any associated facilities:

(1) The boundaries of the site proposed for the project, which must be delineated on a United States Geological Survey Map or other map as appropriate.
(2) The location of other wind turbines in the general area of the proposed wind power project.
(3) The applicant's wind rights within the boundaries of the proposed site.

(g) The permit applicant shall provide the following information regarding the design of the proposed project:
(1) A project layout, including a map showing the proposed array spacing of the turbines.
(2) A description of the turbines and towers and other equipment to be used in the project, including the name of the manufacturers of the equipment.
(3) A description of the project electrical system, including transformers at both low voltage and medium voltage.
(4) A description and location of associated facilities.

(h) An applicant for a site permit shall include with the application an analysis of the potential impacts of the project after gathering data for at least one year, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:
(1) Demographics, including people, homes, and businesses.
(2) Noise.
(3) Visual impacts.
(4) Public services and infrastructure.
(5) Cultural and archaeological impacts.
(6) Recreational resources.
(7) Public health and safety, including air traffic, electromagnetic fields, and security and traffic.
(8) Hazardous materials.
(9) Land-based economics, including agriculture, forestry, and mining.
(10) Tourism and community benefits.
(11) Topography.
(12) Soils.
(13) Geologic and groundwater resources.
(14) Surface water and floodplain resources.
(15) Wetlands.
(16) Vegetation.
(17) Avian, including an avian impact analysis of at least one year that includes a literature review, interviews with local and regional experts (agency staff, environmental organizations, and local birders) and site visits conducted by a trained wildlife biologist. The analysis report shall provide an indication of the type and number of birds that are known or suspected to use a project site and the area surrounding that site.

(18) Wildlife.
(19) Rare and unique natural resources.

Site permits for adjacent, contiguous, or nearby sites may use preexisting environmental assessment data at the determination of the county planning board, without the need for one-year data collection.

The analysis of the environmental impacts required in this subsection satisfies the environmental review requirements of Article 1 of Chapter 113A of the General Statutes. No additional environmental assessment worksheet or environmental impact statement shall be required on a proposed project.

(i) The permit applicant shall describe all of the following:
(1) The manner in which the project, including associated facilities, will be constructed.
(2) How the project will be operated and maintained after construction, including a maintenance schedule.
(3) The estimated costs of design and construction of the project and the expected operating costs.
(4) The anticipated schedule for completion of the project, including the time periods for land acquisition, obtaining a site permit, obtaining financing, procuring equipment, and completing construction. The applicant shall identify the expected date of commercial operation.
(5) The energy expected to be generated by the project.

(j) The permit applicant shall include the following information regarding decommissioning of the project and restoring the site:
(1) The anticipated life of the project.
(2) The estimated decommissioning costs in current dollars.
(3) The method and schedule for updating the costs of decommissioning and restoration.
(4) The method of ensuring that funds will be available for decommissioning and restoration.
(5) The anticipated manner in which the project will be decommissioned and the site restored.

(k) The permit applicant shall include in the application a list of all known federal, state, and local agencies or authorities, and titles of the permits they issue that are required for the proposed project.

(l) The county planning board and the board of commissioners of the county shall take the following actions:
(1) Within 30 days after receipt of an application for a site permit, the county planning board shall accept, conditionally accept, or reject the application. If the county planning board conditionally accepts or rejects an application, the county planning board shall advise the applicant in writing of the deficiencies in the application and the manner in which the deficiencies can be addressed. Upon refiling of a revised application, the county planning board shall again act on the application within 30 days after receipt.

(2) Within 15 days after the county planning board accepts an application, the permit applicant shall provide notice of the application to each municipality and township board in the county where the project is proposed to be located and shall publish notice of the application in a newspaper of general circulation in the county. Failure to give this notice or a delay in providing this notice shall constitute cause to repeal the county planning board's recommended acceptance of the application or may result in a delay in the effective date of the recommended acceptance. The county planning board may elect to give the notice required in this subsection instead of requiring the applicant to provide the notice.

(3) Upon acceptance of the application by the county planning board, the county planning board shall advise the applicant of how many additional copies of the application to submit to the county planning board. The applicant shall also provide a copy of the document of notice to each landowner within and adjoining the boundaries of the proposed project site. The applicant shall maintain a list of all persons to whom copies of the application are provided.

(4) Within 60 days after recommended acceptance of the application by the county planning board, the county board of commissioners shall make a preliminary determination of whether the permit may be issued or should be denied. If the preliminary determination is to issue a permit, the county planning board shall prepare a draft site permit for the project. The draft site permit must identify the person or persons who will be the permittee, describe the proposed project, and include proposed permit conditions. A draft site permit does not authorize a person to construct a project. The county board of commissioners, upon the recommendation of the county planning board, may change the draft site permit in any respect before final issuance of the permit or it may deny the site permit.

(m) Upon preparation of a draft site permit, the county planning board shall provide public notice of the draft site permit. The public notice shall include all of the following:

(1) The name and address of the applicant for the site permit.

(2) A concise description of the proposed project.

(3) The location where a copy of the site permit application may be reviewed and how a copy of the application may be obtained.

(4) A statement of the availability of the draft site permit.

(5) The time and place of a public information meeting.

(6) A statement that during the comment period any person may submit comments to the county planning board on the draft site permit, a statement of the dates on which the comment period commences and terminates, and a statement that any person may request an appearance before the county planning board on the matter.

(7) A brief description of the anticipated procedures for reaching a final decision on the permit application.

The county planning board shall publish the notice in newspapers with circulation in each municipality in which the proposed project is to be located. The county planning board shall also mail the public notice to those persons known to the county planning board and the county board of commissioners to be interested in the proposed project, including governmental officials in municipality in which the project is proposed to be located.

(n) The county board of commissioners shall afford the public a minimum of 30 days after publication of the draft site permit notice to submit written comments to the county planning board. The board of commissioners may extend the public comment period if necessary to afford the public adequate time to review the application and other pertinent information in order to formulate complete comments on the draft site permit and the project.

(o) The board of commissioners shall act to approve or reject the draft site permit within 30 days of the comment period including any proposed modifications. The board shall consult with the applicant during this period to ensure that the applicant has adequate time to respond. This period may be extended by mutual agreement of the board and the applicant.

(p) As used in this section, the term "project' means a utility scale wind energy system project authorized by this section."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 512

Short Title:	Electric Service Conflicts.	(Public)
Sponsors:	Senators Clodfelter; Apodaca, Holloman, Jenkins, Malone, and Tillman.	
Referred to:	Rules and Operations of the Senate.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE CORRIDOR RIGHTS OF ELECTRIC SUPPLIERS FROM EROSION DUE TO ANNEXATION OR INCORPORATION, TO CLARIFY THE RIGHTS OF PRIMARY AND SECONDARY SUPPLIERS OF ELECTRICITY TO SUPPLY ELECTRIC SERVICE WHEN THEIR DISTRIBUTION AND TRANSMISSION LINES ARE IN CLOSE PROXIMITY, TO PROHIBIT A CITY FROM CONDITIONING THE PROVISION OF WATER AND SEWER SERVICES TO VOLUNTARY ANNEXATION PETITIONERS UPON THE PETITIONERS AGREEING TO BE SUPPLIED WITH ELECTRICITY BY THE CITY, AND TO CREATE A MECHANISM TO FACILITATE THE RESOLUTION OF TERRITORIAL DISPUTES BETWEEN ELECTRICITY SUPPLIERS.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to electric service conflicts.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 895

Short Title:	Real Estate Trust Monies.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY REAL ESTATE BROKERS DUTIES RELATED TO REAL ESTATE TRUST MONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the

express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the ~~temporary~~ custodian or manager of the funds of ~~others, in a real estate transaction;~~another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Brittain	Rutherford Electric Membership Corp. Morganton, NC
DIRK Burkson	Rutherford Electric Membership Corp Forest City NC.
Ken Melton	D.O.R.
Bruce Simmons	PEE DEE Electric Membership
J Ham	FORMER Friend of RB Sloan
RB Sloan	ENERGYUNITED
Patrick Woods (4)	Franklinton Senior Center 602. East Masai St. Franklinton, NC 27525
Larry Shirley	State Energy Office
Dana Simpson	Smith Anderson

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 26, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Estherine Davis	ElectriCities
Kathy Hawkins	Progress Energy
Alice Garland	NCDOC
Bob Bennink	NCUC ~~Staff~~
Sam Kirby	"
Mike Carey	Carey & Associates
Kathleen Edwards	UNC-CH Legis. Reporting Service
[illegible]	Sf
Ivan Urlaub	NC Sustainable Energy Association
Suzanne Rowley	Gov office
John McHG	Gov office

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
STEVEN R. SNYDER	MODULAR BUILDING SYSTEMS ASSOC.
Molly Diggins	Sierra Club
DENNIS GRADY	ASU ENERGY CENTER
Cole McVey	ASU Energy Center
Dan McMillan	Ashe County Manager 150 Government Cr. Jefferson NC
Brad Lovin	NC Manufactured Housing Institute
Rick Zechini	NC Assoc. of Realtors
Tim Bradley	NC Dept of Insurance
Sheila Tatton-DeWitt	JWP Civitas Institute
Elizabeth Self	Sierra Club
Erin Kinney	NC Conservation Network

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 26, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony Herrin	Union Power Cooperative, Monroe NC
Donnie Spivey	Pee Dee Electric, Wadesboro NC
Bob Gillam	Public Staff - NCUC
Jimmy Smith	Four County Electric Membership Corporation - Burgaw
Bryant Herring	Four County Electric Membership Corp - Elizabethtown Area
Luanne Sherrin	Union Power Cooperative - Monroe NC
Adeline Cunningham	Union Power Cooperative - Monroe, NC
Terri Starnes	Union Power Cooperative - Monroe NC
Lynn Tew	South River EMC, Dunn
Howard Conyers	Wake Electric, EMC. Wake Forest, N.C.
David A. Williams	" " "

SENATE COMMERCE COMMITTEE
Thursday, May 26, 2005 at 11:40 AM
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:40 AM on Thursday, May 26, 2005, in the Senate Chamber of the Legislative Building. Sixteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles explained that Senator Kay Hagan had an amendment to SB 828, Amend Wine Sales and Production Laws, for which the Commerce Committee had been requested to consider prior to its presentation on the floor. See Attached amendment and explanation. Senator Nebitt moved that the committee approve the proposed amendment. The motion carried.

The meeting was adjourned at 11:45 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 828

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

S828-AMA-14 [v.1]

Date _____,2005

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

Senator Hagan

moves to amend the bill on page 4 at line 37 by deleting the line and inserting the following language to read:

"**SECTION 4.** G.S. 18B-1116 is amended by adding a new subsection to read:

'(c) As used in this section, the phrase "giving things of value" shall not include the dividing or removing of individual containers of alcohol from larger packages of alcohol or the delivery of such to the retail permittee.'

SECTION 5. This act becomes effective July 1, 2005."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

RC —
Here is explanation

Amendment explanation:

This amendment clarifies the law regulating the sale of wine from wholesalers to retail points of sale (convenience stores, grocery stores, restaurants, etc.).

The amendment makes clear that, if a retailer wants to buy less than a case of wine from the wholesaler (i.e., "splitting the case"), the wholesaler may sell less than a case to the retailer without charging a fee to split the case. There is some question as to whether splitting a case without charging a fee is a "thing of value," which, under current law, cannot be given for free. The amendment clarifies that splitting a case for free is not a "thing of value."

By clarifying the law to allow split cases to be sold without having to charge a fee, this will encourage the sale of wine produced by small, independent wineries.

This amendment is supported by the NC Retail Merchants Association, the Carolinas Food Industry Council, the NC Restaurant Association, the NC Independent Wine Retailers Association, and the NC convenience Store Association.

Background:

The ABC Commission recently ruled that wholesalers must charge a fee for splitting a case of wine. There are some questions as to whether proper legal procedures were followed by the Commission in issuing its ruling. The result of the ruling (which will go into effect June 1st), will be to add cost to all wines at retail point of sale, and will unfairly prejudice small, independent wineries. Large wineries can sell their wine (in cases) to wholesalers in such bulk that increases in retail sales will not hurt them. Small wineries, on the other hand, cannot sell in large bulk to wholesalers, so the increase in price that will result from the new mandatory fee with disadvantage small, independent wineries, including those in NC.

Senate Commerce Committee
Tuesday, May 31, 2005, 9:00 AM and 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 247	50th Senatorial District Local Act-5.	Senator Snow, Jr.
SB 277	Insurance Funds.	Senator Dalton
SB 512	Electric Service Conflicts.	Senator Clodfelter
SB 756	Revise Building Commission Membership.	Senator Nesbitt, Jr.
SB 757	ESC Omnibus Act.	Senator Nesbitt, Jr.
SB 895	Real Estate Trust Monies.	Senator Rand
SB 952	Motor Vehicle Repair Consumer Protection.	Senator Lucas

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, May 31, 2005 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 a.m. on May 31, 2005, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Senator John Snow to present SB 247, 50th Senatorial District Local Act-5. Senator Tom Apodaca moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Snow explained the committee substitute. Senator Apodaca moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles recognized Senator Walter Dalton to present SB 277, Insurance Funds. Senator David Hoyle moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Dalton explained the committee substitute. Senator Hoyle moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles recognized Walker Reagan, Counsel to the Committee, to present SB 895, Real Estate Trust Monies. Senator Harris Blake moved the adoption of a committee substitute for purposes of discussion. The motion carried. Mr. Reagan explained the bill. Mr. Tom Miller, Attorney General staff, representing the North Carolina Real Estate Commission, spoke in favor of the bill. Mr. Rick Zechini, representing the North Carolina Association of Realtors, reported the Association saw no problem with the bill. Senator Apodaca moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles recognized Senator Martin Nesbitt to present SB 756, Revise Building Commission Membership. Senator William Purcell moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Nesbitt explained the committee substitute. Mr. Dave Crawford, Executive Director of the American Institute of Architects, spoke in favor of the bill. Senator David Hoyle suggested an amendment be drawn to add a design professional to the Commission who would be appointed by the Governor.

While the amendment was being drafted, Senator Soles recognized Senator Nesbitt to present SB 757, ESC Omnibus Act. Senator Vernon Malone moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Soles announced SB 757 would be carried over to the meeting at 11:00 a.m.

Ms. Wendy Ray, Counsel to the Committee, read the amendment to the committee substitute for SB 756. Senator Phil Berger moved adoption of the amendment. The motion carried. Senator Doug Berger moved an unfavorable report of the bill, but favorable report of the committee substitute as amended. The motion carried.

The meeting adjourned at 9:55 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 31, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **277** Insurance Funds.

Draft Number:	PCS 35233
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **756** Revise Building Commission Membership.

Draft Number:	PCS 75326
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 31, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **247** 50th Senatorial District Local Act-5.

Draft Number:	PCS 75304
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Changes Local to Public:	Yes

S.B. **757** ESC Omnibus Act.

Draft Number:	PCS 35229
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

SB 247 changes from Local to Public.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 31, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **512** Electric Service Conflicts.

Draft Number:	PCS 35234
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **895** Real Estate Trust Monies.

Draft Number:	PCS 65331
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 247

Short Title:	50th Senatorial District Local Act-5.	(Local)
Sponsors:	Senator Snow.	
Referred to:	Rules and Operations of the Senate.	

March 1, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE 50TH SENATORIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates only to the 50th Senatorial District.

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

SENATE BILL 247:
Regulation of Heliports

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 31, 2005
Introduced by:	Sen. Snow	**Summary by:**	Wendy Graf Ray
Version:	PCS to First Edition S247-PCS75304-MA-8		Committee Counsel

SUMMARY: Senate Bill 247 would prohibit the operation of heliports on land in tourist resort counties that is within 10 miles of a national park or tribal land.

BILL ANALYSIS: Senate Bill 247 would prohibit the operation of a heliport on land that meets both of the following requirements:

- It is located in a "tourist resort county", which is a county having either:
  - More than 5% of its territory located within a national park; or
  - At least 1000 acres of tribal land within its borders.
- It is within 10 miles of a national park or Indian tribal land.

The operation of a heliport in violation of this provision would be considered a public nuisance and would have to be abated by July 1, 2007. Until that time, heliports would be allowed to continue operating in violation of the provision, as long as the heliport does not expand or discontinue operations for 6 months or more. In addition, the provision would not be applicable to a heliport operated by anyone authorized to operate an air ambulance.

Any person who resides on land subject to the prohibition would have a right of action against the person operating the heliport and could seek injunctive relief, recover damages for nuisance, and recover costs and attorneys' fees.

EFFECTIVE DATE: The bill would become effective July 1, 2005

S0247e1-SMSU-PCS75304-MA-8

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 247
PROPOSED COMMITTEE SUBSTITUTE S247-PCS75304-MA-8

Short Title: Regulation of Heliports. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTRICT HELIPORT LOCATIONS AND DECLARE CERTAIN HELIPORTS A NUISANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 63-1(a) is amended by adding a new subdivision to read:

"(13a) 'Heliport' means any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of a helicopter, whether or not facilities are provided for the shelter, servicing, or repair of helicopters, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for heliport buildings or other airport facilities, and all appurtenant rights-of-way, whether heretofore or hereafter established."

SECTION 2. G.S. 63-1(a) is amended by adding a new subdivision to read:

"(22) 'Tourist resort county' means a county having more than five percent (5%) of its territory located within the boundaries of a national park established pursuant to 16 U.S.C. § 403 or a county that has not less than 1,000 acres of tribal land."

SECTION 3. G.S. 63-1(a) is amended by adding a new subdivision to read:

"(23) 'Tribal Land' means that portion of Indian country, as the term Indian country is used in 18 U.S.C. § 1151, that is within or abutting a national park established pursuant to 16 U.S.C. § 403."

SECTION 4. Chapter 63 of the General Statutes is amended by adding a new Article to read:

"Article 10.

"Regulation of Heliports.

"**§ 63-100. Regulation of heliports.**

Land in a tourist resort county and within 10 miles of the boundary of either a national park, established pursuant to 16 U.S.C. § 403, or Indian tribal land shall not be used as a heliport.

"**§ 63-101. Violations – Heliports deemed a nuisance – Abatement, removal, and conformity.**

Notwithstanding the provisions of Chapter 19 of the General Statutes, or any other law to the contrary, a heliport operating as of July 1, 2005, which is in violation of G.S. 63-100, is declared a public nuisance and shall be abated, removed, or changed to conform to this Article by July 1, 2007. Such heliports may continue to operate until that time provided:

(1) The heliport is not expanded or extended; and

(2) If the use of the land, or any portion thereof, as a heliport is discontinued for a period of six months or changed, any future use of the land is in conformity with this Article.

"**§ 63-102. Violations – Heliports deemed a nuisance – Private right of action.**

Any heliport operated in violation of this Article is deemed a public nuisance, causing irreparable injury to the State, the county in which the heliport is located, municipalities located in that county, and the residents of the county. In addition to any other remedies or rights of action possessed by any person or governmental unit, persons who reside on land subject to the prohibitions in this Chapter have a private right of action against a person operating a heliport in violation of this Chapter and have the right to seek injunctive relief as allowed by law to recover damages for nuisance and to recover costs and attorneys' fees if the resident is the prevailing party.

"**§ 63-103. Exceptions.**

The provisions of this Article shall not apply to any heliport operated by the State of North Carolina, any of its political subdivisions, any law enforcement, fire or rescue agency, or a healthcare institution licensed by the State to operate an air ambulance."

SECTION 5. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 277

Short Title:	Insurance Funds.	(Public)
Sponsors:	Senator Dalton.	
Referred to:	Appropriations/Base Budget.	

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF INSURANCE TO STUDY AND IMPLEMENT RULES FOR SELF-INSURERS TO ADDRESS THOSE ORGANIZATIONS EXEMPTED UNDER FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. This act appropriates funds to the Department of Insurance to study and implement rules for self-insurers to address those organizations exempted under federal law.

SECTION 2. This act becomes effective July 1, 2005.

SENATE BILL 277:
Motor Vehicle Self- Insurers

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 30, 2005
Introduced by:	Sen. Dalton	**Summary by:**	Tim Hovis
Version:	PCS to First Edition S277-CSRG		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 277 would amend the existing law relating to self-insurers for automobile insurance to recognize a new category of self-insurers. The bill would allow the Commissioner to recognize as a self-insurer any organized group which has been in existence since January 1, 1970 upon proof that the group meets the following conditions:***

- ***Operates more than 5 leased or owned registered vehicles***
- ***Holds a common belief in mutual financial assistance and share in financial obligations of other members***
- ***Has met all insurance obligations for the preceding five years***
- ***Is financially solvent and not subject to any bankruptcy, trusteeship, receivership or other court proceeding questioning the group's solvency***
- ***Does not have any judgments arising out of the operation or maintenance of a motor vehicle which has remained unsatisfied for more than 30 days after becoming final***
- ***Has forfeited all rights to Social Security old-age, survivors, and disability benefits, and has forfeited all rights to Social Security health benefits for the aged and disabled***
- ***Has no other factors leading the Commissioner to believe that the group is unable to pay judgments against them***

The Commissioner may issue the certificate of self-insurance if he or she is satisfied that the applicant will be able to pay any judgments. The certificate applies to owners and operators of motor vehicles who are group members.

The certificate may be cancelled with 30 days written notice if there is reason to believe the group is no longer qualified under this section.

CURRENT LAW: Under current law, any person with more than 25 motor vehicles may qualify as a self-insurer by obtaining a certificate of self-insurance from the Commissioner of Insurance. The Commissioner, in his or her discretion, may issue the certificate if the Commissioner is satisfied that the person will be able to pay judgments obtained against the person. The Commissioner, with not less than five days notice and a hearing, may cancel the certificate and failure to pay a within 30 days of final judgment constitutes reasonable grounds for cancellation.

EFFECTIVE DATE: The Proposed Committee Substitute for Senate Bill 277 would become effective July 1, 2005.

S0277e1-SMRG-CSRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 277
PROPOSED COMMITTEE SUBSTITUTE S277-CSRG-21 [v.6]

5/31/2005 8:51:33 AM

Short Title: Motor Vehicle Self-Insurers. (Public)

Sponsors:

Referred to:

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF A CERTIFICATE OF MOTOR VEHICLE SELF-INSURANCE FOR CERTAIN GROUPS TO ADDRESS THOSE ORGANIZATIONS EXEMPTED UNDER FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.33 reads as rewritten:

"**§ 20-279.33. Self-insurers.**

(a) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner as provided in subsection (b) of this section. For the purpose of this Article, the State of North Carolina shall be considered a self-insurer.

(b) The Commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five days' notice and a hearing pursuant to such notice, the Commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

(d) Notwithstanding any other provision of this section, any organized group of persons which has been in existence since January 1, 1970, may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner upon proof satisfactory to the Commissioner that each of the following conditions are met:

(i) Members of the group operate five (5) or more registered vehicles which are either owned or leased by them;

(ii) Members of the group hold a common belief in mutual financial assistance in time of need to the extent that they share in financial obligations of other members who would otherwise be unable to meet their obligations.
(iii) The group has met all of its insurance obligations for the five years preceding its application.
(iii) The group is financially solvent and not subject to any actions in bankruptcy, trusteeship, receivership, or any other court proceeding in which the group's financial solvency is in question.
(iv) Neither the group nor any of its members has any judgments arising out of the operation, maintenance or use of a motor vehicle taken against which have remained unsatisfied for more than thirty (30) days after becoming final;
(v) Each member has voluntarily forfeited all rights to any social security payment or benefits under Titles II and XVIII of the Social Security Act by submitting with the U.S. Department of the Treasury, Internal Revenue Service, a Form 4029 and having that form duly approved.
(vi) There are no other factors which cause the Commissioner to believe that the group and its members are not of sufficient financial ability to pay judgments against them.

The Commissioner may, in the Commissioner's discretion, upon the application of a group, issue a certificate of self-insurance when the Commissioner is satisfied that the group applicant is possessed and will continue to be possessed of an ability to pay any judgments that might be rendered against the group. The certificate shall apply to the owners and operators who are members of the group.

The Commissioner may, at any time after the issuance of a certificate of self-insurance under this subsection, cancel the certificate by giving thirty (30) days written notice of cancellation to the group whenever there is reason to believe that the group to whom the certificate was issued is no longer qualified as a self-insurer under this subsection."

SECTION 2. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 277
PROPOSED COMMITTEE SUBSTITUTE S277-PCS35233-RG-21

Short Title: Motor Vehicle Self-Insurers. (Public)

Sponsors:

Referred to:

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF A CERTIFICATE OF MOTOR VEHICLE SELF-INSURANCE FOR CERTAIN GROUPS TO ADDRESS THOSE ORGANIZATIONS EXEMPTED UNDER FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.33 reads as rewritten:

"**§ 20-279.33. Self-insurers.**

(a) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner as provided in subsection (b) of this section. For the purpose of this Article, the State of North Carolina shall be considered a self-insurer.

(b) The Commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five days' notice and a hearing pursuant to such notice, the Commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

(d) Notwithstanding any other provision of this section, any organized group of persons which has been in existence since January 1, 1970, may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner upon proof satisfactory to the Commissioner that each of the following conditions are met:

(1) Members of the group operate five or more registered vehicles which are either owned or leased by them.

(2) Members of the group hold a common belief in mutual financial assistance in time of need to the extent that they share in financial

obligations of other members who would otherwise be unable to meet their obligations.

(3) The group has met all of its insurance obligations for the five years preceding its application.

(4) The group is financially solvent and not subject to any actions in bankruptcy, trusteeship, receivership, or any other court proceeding in which the group's financial solvency is in question.

(5) Neither the group nor any of its members has any judgments arising out of the operation, maintenance, or use of a motor vehicle taken against which have remained unsatisfied for more than 30 days after becoming final.

(6) Each member has voluntarily forfeited all rights to any social security payment or benefits under Titles II and XVIII of the Social Security Act by submitting with the U.S. Department of the Treasury, Internal Revenue Service, a Form 4029 and having that form duly approved.

(7) There are no other factors which cause the Commissioner to believe that the group and its members are not of sufficient financial ability to pay judgments against them.

The Commissioner may, in the Commissioner's discretion, upon the application of a group, issue a certificate of self-insurance when the Commissioner is satisfied that the group applicant is possessed and will continue to be possessed of an ability to pay any judgments that might be rendered against the group. The certificate shall apply to the owners and operators who are members of the group.

The Commissioner may, at any time after the issuance of a certificate of self-insurance under this subsection, cancel the certificate by giving 30 days' written notice of cancellation to the group whenever there is reason to believe that the group to whom the certificate was issued is no longer qualified as a self-insurer under this subsection."

SECTION 2. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 895

Short Title:	Real Estate Trust Monies.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY REAL ESTATE BROKERS DUTIES RELATED TO REAL ESTATE TRUST MONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the

express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the ~~temporary~~ custodian or manager of the funds of ~~others, in a real estate transaction;~~another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

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

SENATE BILL 895:
Real Estate Commission and Broker Law Changes

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 26, 2005
Introduced by:	Sen. Rand	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition S895-CSRU-43		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 895 would amend the law to allow the Real Estate Commission to set for its board members and staff its own rate for per diem, authorize mileage reimbursement at the business standard mileage rate established by the IRS, and authorize the Commission to deposits its funds in the same types of accounts and investments that other public authorities are authorized to use. The bill also clarifies the law related to real estate brokers holding money in situations where a real estate license is not required.***

CURRENT LAW: Currently members of the Real Estate Commission are governed by G.S. 93B-5 for purposes of per diem, subsistence and travel allowances. Under G.S. 93B-5 board members are entitled to a per diem of $100 per day, subsistence of $81 per day for instate travel and $93 for out-of-state travel, and mileage reimbursement of $.25 per mile. Current law only applies the prohibition on commingling of other people's money with the broker's money in situation where the broker is acting a licensed realtor in a real estate transaction.

BILL ANALYSIS:

Section 1 of the bill would authorize the Real Estate Commission to establish its own per diem rate, would permit mileage reimbursement at the Internal Revenue Service's business standard mileage rate instead of $.25. This section also permits the Commission to deposits moneys of the Commission in accounts, CD's, and time deposits in banks, savings and loan associations, or trust companies, and in securities authorized for local governments or public authorities. This section also permits the Commission to reimburse its employees travel expenses and mileage. Subsistence is to be at the standard State rate and mileage at the IRS business standard mileage rate.

Section 2 amends the law to make it clear that the Commission may take disciplinary action against a licensed broker for commingling other people's money with the brokers, or failing to property deposit or account for the funds of others held by the broker, even if the funds lawfully held in circumstances for which a real estate license is not required or in a situation that is not a real estate transaction. The primary example would be real estate brokers who act a property manager for homeowner associations and handles funds of the association.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 895
PROPOSED COMMITTEE SUBSTITUTE S895-CSRU-43 [v.1]

5/25/2005 6:11:06 PM

Short Title: R/E Commission and Broker Law Changes. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY REAL ESTATE BROKERS DUTIES RELATED TO REAL ESTATE TRUST MONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-3 reads as rewritten

"§ 93A-3. Commission created; compensation; organization.

...

(b) ~~Members~~ The provisions of G.S. 93B-5 notwithstanding, members of the Commission shall receive as compensation for each day spent on work for the Commission a per diem in an amount established by the Commission by rule, and mileage reimbursement for transportation by privately owned automobile at the business standard mileage rate set by the Internal Revenue Service per mile of travel along with actual cost of tolls paid. ~~the per diem, subsistence and travel allowances as provided in G.S. 93B-5.~~ The total expense of the administration of this Chapter shall not exceed the total income therefrom; and none of the expenses of said Commission or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Commission nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Commission may set aside an expense reserve each year not to exceed ten percent (10%) of the previous year's gross income; then any surplus shall go to the general fund of the State of North Carolina The Commission may deposit moneys in accounts, certificates of deposits, or time deposits as the Commission may approve, in any bank, savings and loan association, or trust company. Moneys also may be invested in the same classes of securities referenced in G.S. 159-30(c).

...

(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission shall reimburse its employees for travel on official business. Mileage expenses for transportation by privately owned automobile shall be reimbursed at the business standard mileage set by the Internal Revenue Service per mile of travel along with the actual tolls paid. Other travel expenses shall be reimbursed in accordance with G.S. 138-6. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b).

..."

SECTION 2. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the ~~temporary~~ custodian or manager of the funds of ~~others, in a real estate transaction;~~ another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 895
PROPOSED COMMITTEE SUBSTITUTE S895-PCS65331-RU-43

Short Title: R/E Commission and Broker Law Changes. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY REAL ESTATE BROKERS DUTIES RELATED TO REAL ESTATE TRUST MONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-3 reads as rewritten:

"**§ 93A-3. Commission created; compensation; organization.**

...

(b) ~~Members~~The provisions of G.S. 93B-5 notwithstanding, members of the Commission shall receive as compensation for each day spent on work for the Commission a per diem in an amount established by the Commission by rule, and mileage reimbursement for transportation by privately owned automobile at the business standard mileage rate set by the Internal Revenue Service per mile of travel along with actual cost of tolls paid. ~~the per diem, subsistence and travel allowances as provided in G.S. 93B-5.~~ The total expense of the administration of this Chapter shall not exceed the total income therefrom; and none of the expenses of said Commission or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Commission nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Commission may set aside an expense reserve each year not to exceed ten percent (10%) of the previous year's gross income; then any surplus shall go to the general fund of the State of North Carolina. The Commission may deposit moneys in accounts, certificates of deposit, or time deposits as the Commission may approve, in any bank, savings and loan association, or trust company. Moneys also may be invested in the same classes of securities referenced in G.S. 159-30(c).

...

(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission shall reimburse its employees for travel on official business. Mileage expenses for transportation by privately owned automobile shall be reimbursed at the business standard mileage set by the Internal Revenue Service per mile of travel along with the actual tolls paid. Other travel expenses shall be reimbursed in accordance with G.S. 138-6. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b).

..."

SECTION 2. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the ~~temporary~~ custodian or manager of the funds of ~~others, in a real estate transaction;~~another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 756

Short Title:	Revise Building Commission Membership.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MEMBERSHIP OF THE STATE BUILDING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.25 reads as rewritten:

"**§ 143-135.25. State Building Commission – Creation; staff; membership; appointments; terms; vacancies; chairman; compensation.**

(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management program and to perform the duties created under this Article.

(b) The State Construction Office of the Department of Administration shall provide staff to the State Building Commission. The chairman of the Commission shall provide direction to the State Construction Office on its work for the Commission.

The director of the State Construction Office shall be a registered engineer or licensed architect and shall be technically qualified by educational background and professional experience in building design, construction, or facilities management. The administrative head shall be appointed by the Secretary of the Department of Administration.

(c) The Commission shall consist of ~~nine~~ 12 members qualified and appointed as follows:

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General

Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(9) A representative of local government, chosen from among not more than two persons nominated by the North Carolina Association of County Commissioners and two persons nominated by the North Carolina League of Municipalities, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(10) A building contractor or subcontractor whose primary business is or was the construction of commercial or industrial buildings or facilities, or an employee of a building contractor or subcontractor whose primary business is or was the construction of commercial or industrial buildings or facilities, chosen from among not more than three persons nominated by the Associated Builders and Contractors of the Carolinas, appointed by the General Assembly upon the

recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(11) A building contractor or subcontractor whose primary business is or was the construction of buildings and whose business is designated a minority business by the Department of Administration, or an employee of a building contractor or subcontractor whose primary business is or was the construction of buildings and whose business is designated a minority business by the Department of Administration, appointed by the Governor.

(12) A licensed attorney who is a member of the Construction Law Section of the North Carolina Bar Association and whose primary practice is in construction law, chosen from among not more than three persons nominated by the Construction Law Section of the North Carolina Bar Association, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. The initial term of the member appointed pursuant to subdivision (10) of this subsection shall expire June 30, 2006. The initial term of the member appointed pursuant to subdivision (11) of this subsection shall expire June 30, 2007. The initial term of the member appointed pursuant to subdivision (12) of this subsection shall expire June 30, 2008. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected.

(d) The Commission shall meet at least four times a year on or about January 15, April 15, July 15, and October 15. The Commission shall also meet upon the call of the chairman, or upon call of at least five members. The Secretary of State shall call the first meeting within 30 days of the effective date of this act; the first order of business at the first meeting shall be the election of a chairman by the Commission.

(e) Members of the Commission who are not State officers or employees shall receive per diem of one hundred dollars ($100.00) a day when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. Members

who are State officers or employees shall be reimbursed for travel and subsistence as provided in G.S. 138-6."

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

SENATE BILL 756:
Revise Building Commission Membership

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 31, 2005
Introduced by:	Sen. Nesbitt	**Summary by:**	Wendy Graf Ray
Version:	PCS to First Edition S756-CSSU-21		Committee Counsel

SUMMARY: ***Senate Bill 756 would increase the number of members on the State Building Commission from 9 members to 12 members.***

CURRENT LAW: G.S. 143-135.25 establishes the State Building Commission within the Department of Administration. The Commission is made up of 9 members serving staggered 3-year terms. The members are qualified and appointed as follows:

- 3 members appointed by the Governor:
  - A licensed architect nominated by the NC Chapter of the American Institute of Architects.
  - A licensed electrical contractor nominated by the NC Association of Electrical Contractors and the Carolinas Electrical Contractors' Association.
  - An employee of the university system involved in the capital facilities development process nominated by the Board of Governors of the University of North Carolina.
- 3 members appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate:
  - A registered engineer nominated by the Consulting Engineers Council and the Professional Engineers of NC.
  - A public member.
  - A public member knowledgeable in building construction or maintenance.
- 3 members appointed by the General Assembly upon recommendation of the Speaker of the House:
  - A licensed building contractor nominated by the Carolinas Associated General Contractors.
  - A licensed mechanical contractor nominated by the NC Association of Plumbing, Heating, Cooling Contractors.
  - A representative of local government nominated by the NC Association of County Commissioners or the NC League of Municipalities.

BILL ANALYSIS: Senate Bill 756 would add 3 new members to the State Building Commission to serve staggered 3-year terms and to be qualified and appointed as follows:

- A licensed general contractor, or employee of a company that holds a general contractor's license, whose business is or was commercial or industrial building construction, nominated by the Associated Builders and Contractors of the Carolinas and appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.
- A building contractor or subcontractor, or employee of same, whose business is a minority business, appointed by the Governor.

- A licensed attorney who is a member of the Construction Law Section of the NC Bar Association and who primarily practices construction law, nominated by the Construction law Section of the NC Bar Association and appointed by the General Assembly upon recommendation of the Speaker.

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

S0756e1-SMSU-CSSU-21

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 756
PROPOSED COMMITTEE SUBSTITUTE S756-CSSU-21 [v.2]

5/27/2005 2:54:18 PM

Short Title: Revise Building Commission Membership. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MEMBERSHIP OF THE STATE BUILDING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.25 reads as rewritten:

"**§ 143-135.25. State Building Commission – Creation; staff; membership; appointments; terms; vacancies; chairman; compensation.**

(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management program and to perform the duties created under this Article.

(b) The State Construction Office of the Department of Administration shall provide staff to the State Building Commission. The chairman of the Commission shall provide direction to the State Construction Office on its work for the Commission.

The director of the State Construction Office shall be a registered engineer or licensed architect and shall be technically qualified by educational background and professional experience in building design, construction, or facilities management. The administrative head shall be appointed by the Secretary of the Department of Administration.

(c) The Commission shall consist of ~~nine~~ 12 members qualified and appointed as follows:

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the

Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(9) A representative of local government, chosen from among not more than two persons nominated by the North Carolina Association of County Commissioners and two persons nominated by the North Carolina League of Municipalities, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(10) A licensed general contractor whose primary business is or was the construction of commercial or industrial buildings or facilities, or an employee of a company holding a general contractor's license whose primary business is or was the construction of commercial or industrial buildings or facilities, chosen from among not more than three persons nominated by the Associated Builders and Contractors of the

Carolinas, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(11) A building contractor or subcontractor whose primary business is or was the construction of buildings and whose business is designated a minority business by the Department of Administration, or an employee of a building contractor or subcontractor whose primary business is or was the construction of buildings and whose business is designated a minority business by the Department of Administration, appointed by the Governor.

(12) A licensed attorney who is a member of the Construction Law Section of the North Carolina Bar Association and whose primary practice is in construction law, chosen from among not more than three persons nominated by the Construction Law Section of the North Carolina Bar Association, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. The initial term of the member appointed pursuant to subdivision (10) of this subsection shall expire June 30, 2006. The initial term of the member appointed pursuant to subdivision (11) of this subsection shall expire June 30, 2007. The initial term of the member appointed pursuant to subdivision (12) of this subsection shall expire June 30, 2008. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected.

(d) The Commission shall meet at least four times a year on or about January 15, April 15, July 15, and October 15. The Commission shall also meet upon the call of the chairman, or upon call of at least five members. The Secretary of State shall call the first meeting within 30 days of the effective date of this act; the first order of business at the first meeting shall be the election of a chairman by the Commission.

(e) Members of the Commission who are not State officers or employees shall receive per diem of one hundred dollars ($100.00) a day when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. Members

who are State officers or employees shall be reimbursed for travel and subsistence as provided in G.S. 138-6."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-31-05

S. B. No. 756 Amendment No. 1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X S757-PCS35229-LR-23

Rep.) P. Berger

Sen.)

moves to amend the bill on page 3, line 17-18

( ) WHICH CHANGES THE TITLE

by adding the following between the lines:

"(13) A licensed architect whose primary practice is or was in the design of buildings or a registered engineer whose primary practice is or was in the design of engineering systems for buildings, appointed by the Governor."; and

on page 3, line 27, by adding the following at the end of the line:

"The initial term of the member appointed pursuant to subdivision (13) of this subsection shall expire June 30, 2009."; and

on page 1, line 20 by deleting "12" and adding "13".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 756
PROPOSED COMMITTEE SUBSTITUTE S756-PCS75326-SU-21

Short Title: Revise Building Commission Membership. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MEMBERSHIP OF THE STATE BUILDING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.25 reads as rewritten:

"**§ 143-135.25. State Building Commission – Creation; staff; membership; appointments; terms; vacancies; chairman; compensation.**

(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management program and to perform the duties created under this Article.

(b) The State Construction Office of the Department of Administration shall provide staff to the State Building Commission. The chairman of the Commission shall provide direction to the State Construction Office on its work for the Commission.

The director of the State Construction Office shall be a registered engineer or licensed architect and shall be technically qualified by educational background and professional experience in building design, construction, or facilities management. The administrative head shall be appointed by the Secretary of the Department of Administration.

(c) The Commission shall consist of ~~nine~~ 13 members qualified and appointed as follows:

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the

Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(9) A representative of local government, chosen from among not more than two persons nominated by the North Carolina Association of County Commissioners and two persons nominated by the North Carolina League of Municipalities, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(10) A licensed general contractor whose primary business is or was the construction of commercial or industrial buildings or facilities, or an employee of a company holding a general contractor's license whose primary business is or was the construction of commercial or industrial buildings or facilities, chosen from among not more than three persons nominated by the Associated Builders and Contractors of the

Carolinas, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(11) A building contractor or subcontractor whose primary business is or was the construction of buildings and whose business is designated a minority business by the Department of Administration, or an employee of a building contractor or subcontractor whose primary business is or was the construction of buildings and whose business is designated a minority business by the Department of Administration, appointed by the Governor.

(12) A licensed attorney who is a member of the Construction Law Section of the North Carolina Bar Association and whose primary practice is in construction law, chosen from among not more than three persons nominated by the Construction Law Section of the North Carolina Bar Association, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(13) A licensed architect whose primary practice is or was in the design of buildings or a registered engineer whose primary practice is or was in the design of engineering systems for buildings, appointed by the Governor.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. The initial term of the member appointed pursuant to subdivision (10) of this subsection shall expire June 30, 2006. The initial term of the member appointed pursuant to subdivision (11) of this subsection shall expire June 30, 2007. The initial term of the member appointed pursuant to subdivision (12) of this subsection shall expire June 30, 2008. The initial term of the member appointed pursuant to subdivision (13) of this subsection shall expire June 30, 2009. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected.

(d) The Commission shall meet at least four times a year on or about January 15, April 15, July 15, and October 15. The Commission shall also meet upon the call of the chairman, or upon call of at least five members. The Secretary of State shall call the first

meeting within 30 days of the effective date of this act; the first order of business at the first meeting shall be the election of a chairman by the Commission.

(e) Members of the Commission who are not State officers or employees shall receive per diem of one hundred dollars ($100.00) a day when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence as provided in G.S. 138-6."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 757

Short Title:	ESC Omnibus Act.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-13(a)(3) reads as rewritten:

"**§ 96-13. Benefit eligibility conditions.**

"(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled

substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, each claimant that tests positive for a controlled substance under this subdivision. ~~For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:~~

~~a. 1. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;~~

~~2. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and~~

~~3. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,~~

~~b. Such approval is required for the Commission to receive the benefits of federal law.~~

a. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school."

SECTION 2. G.S. 96-9(a)(3)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does apply, not the contribution rate of an

employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%

3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 3. G.S. 96-9(a)(3)d5. reads as rewritten:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%

0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 4. Sections 2 and 3 of this act become effective July 1, 2005. The remainder of this act is effective when it becomes law.

SENATE BILL 757: ESC Omnibus Act

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 31, 2005
Introduced by:	Sen. Nesbitt	**Summary by:**	Wendy Graf Ray
Version:	PCS to First Edition S757-PCS35229-LR-23		Committee Counsel

SUMMARY: Senate Bill 757 would make changes to the law relating to the Employment Security Commission.

BILL ANALYSIS: Senate Bill 757 would amend Chapter 96 (Employment Security) in the following ways:

Section 1. G.S. 96-13(a) sets out when an unemployed individual is eligible to receive benefits and requires that the individual be able to work and available for work. The current law provides that a person is not available for work if he is registered at and attending school, but then provides detailed exceptions from that provision. The bill would simplify the current law by providing that a person would not be disqualified for eligibility solely on the basis that he or she is in school.

Sections 2 and 3. G.S. 96-9(b) sets out contribution rates for employers. Under the current law, there is a standard rate, but a different rate is used if the employer has an account with a credit balance, and the contribution rate is reduced for any year in which the balance in the Unemployment Insurance Fund equals or exceeds $800,000,000. The bill would amend the law so the contribution rate would be reduced for any year in which the balance in the Unemployment Insurance Fund equals or exceeds 1.95% of the wages reported in the previous calendar year (rather than the flat $800,000,000 benchmark).

Section 4. This section would add a definition for "willfully" to Chapter 96 to clarify that "willfully" and "knowingly" have the same meaning as used in the Chapter.

Section 5. G.S. 96-9(c)(4) deals with the transfer of an employer's account when the employer's business, or part of the business, is acquired by another individual or employing unit. The bill would provide that an account shall not transfer when the individual is not an employer at the time of the acquisition, or when the individual acquired the business for the purpose of getting a reduced contribution rate. The bill would also provide that, whenever part of a business is transferred between entities with substantially common ownership, the tax account would be transferred in accordance with regulations, but employing units transferring entities with common ownership would not be entitled to separate employer status.

Section 6. G.S. 96-18(b1) provides that the penalty for attempting to evade or defeat a tax (Class H felony), as set out in G.S. 105-236(7), applies to unemployment insurance contributions under Chapter 96 only when one of the following circumstances exist:

- Employing unit employs more than 10 employees.
- A contribution of more than $2000 has not been paid.
- An experience rating account balance is more than $5000 overdrawn.

The bill would provide that, if none of those circumstances exist, attempting to evade or defeat a tax would be a Class 1 misdemeanor. It would also provide that a person who violates G.S. 105-236(9a)

(assisting in preparing fraudulent tax information), and is not subject to a fraud penalty, must pay a civil penalty of $500 per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

EFFECTIVE DATE: Sections 2 and 3 of the bill would become effective July 1, 2005. Section 6 of the bill would become effective December 1, 2005. The remainder of the bill would be effective when it becomes law.

S0757e1-SMSU-PCS35229-LR-23

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 757
PROPOSED COMMITTEE SUBSTITUTE S757-PCS35229-LR-23

Short Title: ESC Omnibus Act. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-13(a) reads as rewritten:

"(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that -

(1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission ~~at regular intervals of not less than three weeks and not more than six weeks apart and~~ in accordance with such regulations as the Commission may prescribe;

(2) ~~He~~ The individual has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of

unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. ~~For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:~~

~~a. 1. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;~~

~~2. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and~~

~~3. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,~~

~~b. Such approval is required for the Commission to receive the benefits of federal law.~~

a. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school.

(4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.

(5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services.

(6) An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:

a. The claimant's monetary eligibility is based predominately on wages from part-time work.

b. The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.

c. The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service.

This subdivision shall not be construed to amend subdivision (3) of this subsection as it applies to students or G.S. 96-16 as it applies to seasonal workers."

SECTION 2. G.S. 96-9(a)(3)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does apply, not the contribution rate of an employer whose account has a credit balance is determined in

accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%

3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%										
&										
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 3. G.S. 96-9(a)(3)d5. reads as rewritten:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%

0.6% 0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8% 1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0% 1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2% 1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4% 1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6% 1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8% 2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0% 2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2% 2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4% 2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6% 2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8% 3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0% 3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2% 3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4% 3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6% 3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8% 4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0% & OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 4. G.S. 96-8 is amended by adding a new subdivision to read:

"(28) Willfully. – For the purposes of this Chapter, the terms 'willfully' and 'knowingly' shall have the same meaning."

SECTION 5. G.S. 96-9(c)(4)a. reads as rewritten:

"(c) ...

(4) Transfer of account. –

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business.

Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person or entity is not an employer at the time of the acquisition and (ii) the Commissioner finds that the person or entity acquired the business or account solely or primarily for the purpose of obtaining a reduced rate of contribution.

On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his rate of contributions. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided,

however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification."

SECTION 6. G.S. 96-18(b1) reads as rewritten:

"(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the Commission finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars ($500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement."

SECTION 7. Sections 2 and 3 of this act become effective July 1, 2005. Section 6 of this act becomes effective December 1, 2005. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 512

Short Title:	Electric Service Conflicts.	(Public)
Sponsors:	Senators Clodfelter; Apodaca, Holloman, Jenkins, Malone, and Tillman.	
Referred to:	Rules and Operations of the Senate.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE CORRIDOR RIGHTS OF ELECTRIC SUPPLIERS FROM EROSION DUE TO ANNEXATION OR INCORPORATION, TO CLARIFY THE RIGHTS OF PRIMARY AND SECONDARY SUPPLIERS OF ELECTRICITY TO SUPPLY ELECTRIC SERVICE WHEN THEIR DISTRIBUTION AND TRANSMISSION LINES ARE IN CLOSE PROXIMITY, TO PROHIBIT A CITY FROM CONDITIONING THE PROVISION OF WATER AND SEWER SERVICES TO VOLUNTARY ANNEXATION PETITIONERS UPON THE PETITIONERS AGREEING TO BE SUPPLIED WITH ELECTRICITY BY THE CITY, AND TO CREATE A MECHANISM TO FACILITATE THE RESOLUTION OF TERRITORIAL DISPUTES BETWEEN ELECTRICITY SUPPLIERS.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to electric service conflicts.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 512
PROPOSED COMMITTEE SUBSTITUTE S512-CSRU-39 [v.5]

5/24/2005 9:50:41 AM

Short Title: Electric Service Conflicts. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE PRACTICE OF CONDITIONING THE PROVISION OF WATER OR SEWER SERVICES UPON AGREEING TO BE SUPPLIED WITH ELECTRICITY, TO PRESERVE THE CORRIDOR SERVICE RIGHTS OF ELECTRIC SUPPLIERS OUTSIDE CITIES FROM BEING LOST OR DILUTED DUE TO EXTRATERRITORIAL SERVICES BY CITIES, AND TO ADDRESS OTHER ELECTRIC TERRITORY ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding new sections to read:

"**§ 75-39. Conditioning services on electric service prohibited.**

(a) No municipality or other provider of water or sewer services may offer, or agree to provide, extend, enhance or accelerate the provision of water or sewer services, or facilities or other municipal services or facilities, to any person in consideration of that person or another person agreeing to receive electric service from the municipality or another electric supplier.

(b) No municipality or other provider of water or sewer services may refuse to provide, or threaten or act to deny, delay or terminate the provision of, water or sewer services or facilities, or other municipal services or facilities, to any person as a result of, or in an attempt to influence, the choice of an electric supplier by that person or another person.

(c) A violation of this section by any municipality or other provider of water or sewer services shall constitute an unfair method of competition and an unfair act or practice under G.S. 75-1.1."

SECTION 2. G.S. 160A-331 reads as rewritten:

"**§ 160A-331. Definitions.**

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

...

(2) "Line" means any conductor located inside the ~~city~~ city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, ~~other than~~except as follows:

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such ~~premises, and~~premises.

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

...

(5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or more consumers other than itself within the limits of a ~~city~~ city, or that has a conductor located within 300 feet of an area annexed by a city that is ~~but is not~~ a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

SECTION 3. Part 2 of Article 16 of Chapter 160A of the General Statutes is amended by adding new sections to read:

"**§ 160A-331.1. Protection of certain corridors inside and outside cities.**

(a) Notwithstanding any other provisions of this Article, conductors used or to be used for the distribution or transmission of electricity by a city that is a primary supplier, which conductors are located or constructed outside the corporate limits of the city on or after June 30, 2005, shall be subject to the following additional restrictions:

(1) Such conductors cannot be used to serve any premises initially requiring electric service after June 30, 2005, which premises are located wholly or partially within 300 feet of any conductor used for the distribution or transmission of electricity by any electric supplier, as defined by G.S. 62-110.2, if the conductor of the electric supplier was constructed before the conductor of the city was constructed, or

replaces a conductor of the electric supplier that was constructed before the conductor of the city was constructed.

(2) Such conductors may be used to serve any premises initially requiring electric service after June 30, 2005, which premises are located wholly or partially within 300 feet of any conductor used for the distribution or transmission of electricity by any electric supplier, as defined in G.S. 62-110.2, but only if (i) the conductor of the city was constructed, or replaces a conductor that was constructed, before the conductor of the electric supplier was constructed, and (ii) the consumer chooses to use the electric services of the city to serve the premises.

(b) Notwithstanding any other sections of this Part, after annexation of all or any part of a conductor of an electric supplier, which conductor had restricted the provision of city electric service to premises outside the city under subdivision (a)(1) of this section, the city shall have no authority to initiate service to any premises located wholly or partially within 300 feet of the protected conductor of the affected electric supplier.

(c) Nothing in this section shall enlarge, reduce, alter or affect in any way the authority of a city that is a primary supplier to furnish electric service to city facilities, or to continue the provision of electric service to those premises being served by the city before June 30, 2005.

"**§ 160A-331.2. Agreements of electric suppliers.**

The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city."

SECTION 4. G.S. 160A-332(a) is amended by adding a new subdivision to read:

"(6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice that the consumer may be entitled to choose another electric supplier

for the premises, shall lose the right to initiate service to those premises."

SECTION 5. G.S. 160A-332 is amended by adding a new subsection to read:

"(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute that the provision of service by the current supplier is unlawful, the primary supplier or secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within thirty days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees."

SECTION 6. G.S. 117-10.2 reads as rewritten:

"**§ 117-10.2. Restriction on municipal service.**

Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-331.1, 160A-331.2, 160A-332, and 160A-333. ~~An~~ In addition, an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

SECTION 8. This act becomes effective July 1, 2005 and applies to areas for annexations that are commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 952

Short Title:	Motor Vehicle Repair Consumer Protection.	(Public)
Sponsors:	Senators Lucas, Bingham; and Kinnaird.	
Referred to:	Commerce.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY PROHIBITING COERCIVE AND DISCRIMINATORY PRACTICES IN THE REPAIR OF MOTOR VEHICLES AND AUTOMOBILE GLASS REPAIR AND REPLACEMENT, BY PROVIDING FOR MORE CONSUMER DISCLOSURE BY INSURERS IN THE COLLISION REPAIR PROCESS, AND BY IMPOSING STRICTER MOTOR VEHICLE DAMAGE AND AUTOMOBILE GLASS REPAIR REGULATIONS AND PENALTIES ON INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180 reads as rewritten:

"**§ 58-3-180. Motor vehicle repairs; selection by ~~claimant.~~claimant; prohibited practices; penalties.**

(a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the ~~damage.~~damage, including the repair service or source for the repair or replacement of automobile glass.

(b) The amount determined by the insurer to be payable under a policy covering damage to a motor vehicle shall be paid regardless of the repair service or source selected by the claimant.

(b1) No insurer or insurer representative ~~shall~~ shall:

(1) Suggest or recommend the use of a particular motor vehicle repair service or a particular automobile glass repair or replacement service unless a referral is expressly requested by the claimant. ~~without clearly informing the claimant that (i) the claimant is under no obligation to use the recommended repair service, (ii) the claimant may use the repair service of the claimant's choice, (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service, and (iv) that the insurer or insurer representative has, at the time the~~

~~recommendations are made, a financial interest in the recommended motor vehicle repair service.~~

(2) Own or hold a controlling interest in either a motor vehicle repair service or an automobile glass repair or replacement service that performs services arising from automobile insurance claims.

(3) Make or issue, or cause to be issued, any written or oral statement that willfully misrepresents a motor vehicle repair service or automobile glass repair or replacement service or that willfully disparages a motor vehicle repair service or automobile glass repair or replacement service chosen by the claimant as to the quality, cost, conditions, or benefits of using the particular repair service chosen by the claimant.

(4) Discriminate against a claimant or claimant's chosen motor vehicle repair service or automobile glass repair or replacement service in any way whatsoever.

(5) Refuse to acknowledge a claimant's choice of a motor vehicle repair service or automobile glass repair or replacement service.

(6) Refuse to insure or continue to insure an individual or limit the amount, extent, or kind of coverage available to the individual due to the claimant's choice of a motor vehicle repair service or automobile glass repair or replacement service.

(7) Limit or discount the reasonable basis of the repair cost based on charges that would have been incurred had the motor vehicle been repaired by the insurer's suggested or recommended repair service, if the claimant elects to have the motor vehicle repaired at a repair service of that person's choice.

~~No insurer shall require that the insured or claimant must have a damaged vehicle repaired at an insurer-owned motor vehicle repair service.~~

(b2) If the insurer or insurer representative suggests or recommends a particular motor vehicle repair service or automobile glass repair or replacement service to the claimant, the insurer shall inform the claimant that (i) the insurer is prohibited by law from requiring that the repairs be done by a specific motor vehicle repair service or automobile glass repair or replacement service, (ii) the claimant is under no obligation to use the recommended repair service, (iii) the claimant may use the repair service of the claimant's choice, (iv) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service, (v) the damaged motor vehicle will be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the insurance policy or otherwise allowed by law, (vi) the claimant should contact the insurer if the claimant experiences a problem with the repair of the motor vehicle or the repair or replacement of the automobile glass, (vii) the insurer is receiving discounts under a direct repair contract, if applicable, and (viii) the insurer or insurer representative has, at the time the recommendations are made, a financial interest in the recommended motor vehicle repair service or automobile glass repair or replacement service, if applicable.

If the insurer makes an oral recommendation of a particular motor vehicle repair service or automobile glass repair or replacement service and the claimant accepts the recommendation, the insurer shall provide the information required by this subsection in writing in no less than 10-point type within five calendar days from acceptance of the oral recommendation. The provisions of ~~subsection (b1) of this section~~ this subsection shall be included in nonfleet private passenger motor vehicle insurance policy forms promulgated by the Bureau and approved by the Commissioner.

(c) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-46, provided that the maximum civil penalty that can be assessed under G.S. 58-2-70(d) for a violation of this section is ~~two thousand dollars ($2,000).~~ five thousand dollars ($5,000). A violation of this section includes:

(1) Alluding to or suggesting that the insurer will participate in the warranty of or guarantee of repairs by a recommended motor vehicle repair service or automobile glass repair or replacement service, unless the insurer has in writing expressly exercised the option to repair as allowed in the insurance policy. Once the insurer has exercised the option to repair, the insurer shall then assume full warranty and liability for the repairs.

(2) Implying or suggesting that a motor vehicle repair service or automobile glass repair or replacement service chosen by the claimant is somehow inferior or inconvenient to a repair service on the insurer's list of repair services.

(3) Typing of services. – Unless it is in accordance with the insurance policy or applicable law, no person shall imply, suggest, or allude that the insurer's option to pay for the claimant's losses in money shall be compromised or in any way diminished if the claimant chooses to use the repair service of that person's choice.

(4) Failure to disclose to the claimant at the time that the insurer or insurer representative recommends the use of a designated repair service in connection with settling or paying any claim arising under a policy of insurance that the insurer has agreed to discounts or concessions in parts, labor, materials, or procedures as specified by the insurer that is not transferable to the claimant, if the concessions or discounts do not exist.

(5) Any act of coercion or intimidation causing or intending to cause any licensed motor vehicle repair service or automobile glass repair or replacement service to violate this section.

Violators of this section are liable for damages suffered by the claimant or repair service, including attorneys' fees.

(d) As used in this section, "insurer representative" includes an insurance agent, limited representative, broker, adjuster, ~~and appraiser.~~ appraiser, third-party administrator, or any person acting either directly or indirectly on behalf of an insurer."

SECTION 2. G.S. 58-2-70(d) reads as rewritten:

"(d) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (c) of this section, the penalty shall not be less than ~~one hundred dollars ($100.00) nor more than one thousand dollars ($1,000).~~ five hundred dollars ($500.00) nor more than five thousand dollars ($5,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State."

SECTION 3. G.S. 58-63-15(2) reads as rewritten:

"(2) False Information and Advertising Generally. – Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance ~~business,~~ business, motor vehicle repair business, or automobile glass repair or replacement business, which is untrue, deceptive or misleading."

SECTION 4. G.S. 58-63-15(3) reads as rewritten:

"(3) Defamation. – Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of ~~insurance.~~insurance or in the business of motor vehicle repair or automobile glass replacement or repair."

SECTION 5. G.S. 58-63-15(4) reads as rewritten:

"(4) Boycott, Coercion and Intimidation. – Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of ~~insurance.~~insurance or in the business of motor vehicle repair or automobile glass replacement or repair."

SECTION 6. G.S. 58-63-15 is amended by adding a new subdivision to read:

"(14) Fraudulent, coercive, or dishonest practices. – Using fraudulent, coercive, or dishonest practices in the settlement of a claim or

demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State, including acts for which an insurance producer license is denied or suspended."

SECTION 7. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-39. Restrictions on motor vehicle repair and automobile glass repair or replacement.**

(a) No person, business, or other legal entity doing business in this State that installs, repairs, or replaces automobile glass knowingly shall engage in any of the following acts:

(1) Offer to finance payment of a customer's deductible on terms different from terms offered to customers not making an insurance claim.

(2) Engage in a pattern or practice, on more than an occasional or isolated instance, of promising or offering to provide any credit, incentive, gift, rebate, or special financing arrangement in satisfaction of all or part of an insurance deductible or co-payment owed by the insured under a policy of insurance.

(3) Advertise, promote, or represent by any media, telemarketers, or others, that services are 'free' if in fact an insurer will pay for the service or advertise or make offers for the purpose of soliciting a claim against a property or casualty insurer.

(4) Engage in a pattern or practice, on more than an occasional or isolated instance, of offering to defer collection of, discount, or issue a repayment of a customer's deductible based in whole, or in part, on the availability of insurance coverage.

(b) No insurer or insurer representative as that term is defined in G.S. 58-3-180 knowingly shall require a claimant to have a damaged vehicle repaired at a particular motor vehicle repair service.

(c) A violation of this section shall be considered an unfair trade practice, as prohibited by G.S. 75-1.1.

(d) Any person who suffers an economic loss as a result of the violation of this section may bring an action to recover damages in the General Court of Justice. Actions brought pursuant to this section shall be tried in the county where the violation occurred or in any county where the defendant resides or conducts, transacts, or has transacted business."

SECTION 8. This act becomes effective October 1, 2005.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 9:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Harold Smith	City of Lawrenburg
N. Mack Sharp	Energy United – Statesville, N.C
Charles Hedrick	" " "
Terry R. Horton	" " " "
Jeannette Querby	Energy United Coop - Statesville
Willis Querby	" " "
B. Allen Mills	" " "
Ronnie D. Harrison	" " "
John McCoy	GOV office
Keri Nolan	NC Real Estate Commission
Jennifer Hedgecock	NCREC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 9:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ED MILLER	CITY OF GASTONIA
Roger G. Jones	Greenville Utilities Greenville, NC
Phil Bazemore	Monroe, NC
BILL SCOGGIN	KCCIA
JACK F. NEEL	NCMPA#1 / City of Albemarle
Bob Gillam	Public Staff - NCUC
VIVIAN JONES	TOWN of Wake Forest
Dale Lambert	Randolph EMC
R. Paul Wilms	NCHBA
David Crawford	AIA
	Attn Rodgers

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 9:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVE Simpson	AOC
Ralph Grallo	AOC
Sheila Tatton-Dewitt	JWP Civitas Institute
Barbara Canales	BSCGR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 9:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Payne + Smith

VISITOR REGISTRATION SHEET

Commerce
Name of Committee

5/31/05
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jack Wooten	Energy United
Rufus Wyatt	Energy United
Ron George	City of Morganton
Mark Beason	Capitol Group
Lee Hodge	KCLH
[illegible]	JD. AL, P.A.
[illegible]	City of Lexington Asst CM
Richard L. Thomas	Mayor - City of Lexington
John Cyrus	NC State Grange
Mike Olsen	NC State AFL-CIO
[illegible]	[illegible]
Mario Mendoza	Pappas & Associates
Angel Stamant	ACLM
Robert Isaac	Town of Fairmont
Richard N. Hall	Town of Fairmont
Barry Hayes	Granite Falls
KEVIN SANDERS	TOWN OF MAIDEN
Robert PASCHAL	Young, Moore
NORMAN HOLDEN	city. Southport E-Comm
PAUL FISHER	CITY. SOUTHPORT Electric
Susan Valauri	NATIONWIDE
Joe Stewart	IFNC
John McMillan	MFAS
Joe Johnson	RL
A Hoodin	OSP
Frank W. Folger	NCDOT

Senate Commerce Committee
Tuesday, May 31, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Bills

SB 512	Electric Service Conflicts.	Senator Clodfelter
SB 757	ESC Omnibus Act.	Senator Nesbitt, Jr.
SB 952	Motor Vehicle Repair Consumer Protection.	Senator Lucas

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, May 31, 2005 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on May 31, 2005, in Room 1027 of the Legislative Building. Twenty-one members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Senator Martin Nesbitt to explain the committee substitute for SB 757, ESC Omnibus Act. Mr. David Clegg, Deputy Commissioner of the Employment Security Commission, spoke in favor of the bill and answered some questions. Senator David Hoyle moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles recognized Senator Daniel Clodfelter to present the committee substitute for SB 512, Electric Service Conflicts. He announced that common ground had been reached between ElectriCities and the Electric Cooperatives in the state. Senator David Hoyle moved the adoption of an amendment. The motion carried. Senator Clodfelter explained the amendment. Comments in favor of the amended bill were made by the following:

- Mr. Charles Terrell, CEO of North Carolina Electric Cooperatives
- Mr. Bob Schwenker, General Counsel of the Electric Cooperatives
- Mr. Jesse Tilton, CEO of ElectriCities
- Mr. Mike Collo, ElectriCities

Senator Hoyle moved an unfavorable report of the bill, but favorable report of the committee substitute as amended and engrossed into a new committee substitute. The motion carried.

Senator Jeanne Lucas requested her bill, SB 952, Motor Vehicle Repair Consumer Protection not be heard.

The meeting adjourned at 11:30 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 31, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B.	**512**	Electric Service Conflicts.		
			Draft Number:	PCS 35234
			Sequential Referral:	None
			Recommended Referral:	None
			Long Title Amended:	Yes
S.B.	**895**	Real Estate Trust Monies.		
			Draft Number:	PCS 65331
			Sequential Referral:	None
			Recommended Referral:	None
			Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 31, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **247** 50th Senatorial District Local Act-5.

Draft Number:	PCS 75304
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Changes Local to Public:	Yes

S.B. **757** ESC Omnibus Act.

Draft Number:	PCS 35229
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

SB 247 changes from Local to Public.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 757

Short Title:	ESC Omnibus Act.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Commerce.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-13(a)(3) reads as rewritten:

"**§ 96-13. Benefit eligibility conditions.**

"(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled

substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. ~~For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:~~

~~a. 1. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;~~

~~2. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and~~

~~3. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,~~

~~b. Such approval is required for the Commission to receive the benefits of federal law.~~

a. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school."

SECTION 2. G.S. 96-9(a)(3)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does apply, not the contribution rate of an

employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%

3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%										
&										
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 3. G.S. 96-9(a)(3)d5. reads as rewritten:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%

0.4% 0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6% 0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8% 1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0% 1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2% 1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4% 1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6% 1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8% 2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0% 2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2% 2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4% 2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6% 2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8% 3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0% 3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2% 3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4% 3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6% 3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8% 4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0% & OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 4. Sections 2 and 3 of this act become effective July 1, 2005. The remainder of this act is effective when it becomes law.

SENATE BILL 757: ESC Omnibus Act

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 31, 2005
Introduced by:	Sen. Nesbitt	**Summary by:**	Wendy Graf Ray
Version:	PCS to First Edition S757-PCS35229-LR-23		Committee Counsel

SUMMARY: Senate Bill 757 would make changes to the law relating to the Employment Security Commission.

BILL ANALYSIS: Senate Bill 757 would amend Chapter 96 (Employment Security) in the following ways:

Section 1. G.S. 96-13(a) sets out when an unemployed individual is eligible to receive benefits and requires that the individual be able to work and available for work. The current law provides that a person is not available for work if he is registered at and attending school, but then provides detailed exceptions from that provision. The bill would simplify the current law by providing that a person would not be disqualified for eligibility solely on the basis that he or she is in school.

Sections 2 and 3. G.S. 96-9(b) sets out contribution rates for employers. Under the current law, there is a standard rate, but a different rate is used if the employer has an account with a credit balance, and the contribution rate is reduced for any year in which the balance in the Unemployment Insurance Fund equals or exceeds $800,000,000. The bill would amend the law so the contribution rate would be reduced for any year in which the balance in the Unemployment Insurance Fund equals or exceeds 1.95% of the wages reported in the previous calendar year (rather than the flat $800,000,000 benchmark).

Section 4. This section would add a definition for "willfully" to Chapter 96 to clarify that "willfully" and "knowingly" have the same meaning as used in the Chapter.

Section 5. G.S. 96-9(c)(4) deals with the transfer of an employer's account when the employer's business, or part of the business, is acquired by another individual or employing unit. The bill would provide that an account shall not transfer when the individual is not an employer at the time of the acquisition, or when the individual acquired the business for the purpose of getting a reduced contribution rate. The bill would also provide that, whenever part of a business is transferred between entities with substantially common ownership, the tax account would be transferred in accordance with regulations, but employing units transferring entities with common ownership would not be entitled to separate employer status.

Section 6. G.S. 96-18(b1) provides that the penalty for attempting to evade or defeat a tax (Class H felony), as set out in G.S. 105-236(7), applies to unemployment insurance contributions under Chapter 96 only when one of the following circumstances exist:

- Employing unit employs more than 10 employees.
- A contribution of more than $2000 has not been paid.
- An experience rating account balance is more than $5000 overdrawn.

The bill would provide that, if none of those circumstances exist, attempting to evade or defeat a tax would be a Class 1 misdemeanor. It would also provide that a person who violates G.S. 105-236(9a)

(assisting in preparing fraudulent tax information), and is not subject to a fraud penalty, must pay a civil penalty of $500 per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

EFFECTIVE DATE: Sections 2 and 3 of the bill would become effective July 1, 2005. Section 6 of the bill would become effective December 1, 2005. The remainder of the bill would be effective when it becomes law.

S0757e1-SMSU-PCS35229-LR-23

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 757
PROPOSED COMMITTEE SUBSTITUTE S757-PCS35229-LR-23

Short Title: ESC Omnibus Act. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-13(a) reads as rewritten:

"(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that -

(1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission ~~at regular intervals of not less than three weeks and not more than six weeks apart and~~ in accordance with such regulations as the Commission may prescribe;

(2) ~~He~~ The individual has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of

unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. ~~For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:~~

~~a. 1. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;~~

~~2. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and~~

~~3. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,~~

~~b. Such approval is required for the Commission to receive the benefits of federal law.~~

a. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school.

(4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.

(5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services.

(6) An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:

a. The claimant's monetary eligibility is based predominately on wages from part-time work.

b. The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.

c. The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service.

This subdivision shall not be construed to amend subdivision (3) of this subsection as it applies to students or G.S. 96-16 as it applies to seasonal workers."

SECTION 2. G.S. 96-9(a)(3)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does apply, not the contribution rate of an employer whose account has a credit balance is determined in

accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%

3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%										
&										
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 3. G.S. 96-9(a)(3)d5. reads as rewritten:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%

0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0%	&									
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 4. G.S. 96-8 is amended by adding a new subdivision to read:

"(28) Willfully. – For the purposes of this Chapter, the terms 'willfully' and 'knowingly' shall have the same meaning."

SECTION 5. G.S. 96-9(c)(4)a. reads as rewritten:

"(c) ...

(4) Transfer of account. –

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business.

Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person or entity is not an employer at the time of the acquisition and (ii) the Commissioner finds that the person or entity acquired the business or account solely or primarily for the purpose of obtaining a reduced rate of contribution.

On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his rate of contributions. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided,

however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification."

SECTION 6. G.S. 96-18(b1) reads as rewritten:

"(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the Commission finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars ($500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement."

SECTION 7. Sections 2 and 3 of this act become effective July 1, 2005. Section 6 of this act becomes effective December 1, 2005. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 512

Short Title:	Electric Service Conflicts.	(Public)
Sponsors:	Senators Clodfelter; Apodaca, Holloman, Jenkins, Malone, and Tillman.	
Referred to:	Rules and Operations of the Senate.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE CORRIDOR RIGHTS OF ELECTRIC SUPPLIERS FROM EROSION DUE TO ANNEXATION OR INCORPORATION, TO CLARIFY THE RIGHTS OF PRIMARY AND SECONDARY SUPPLIERS OF ELECTRICITY TO SUPPLY ELECTRIC SERVICE WHEN THEIR DISTRIBUTION AND TRANSMISSION LINES ARE IN CLOSE PROXIMITY, TO PROHIBIT A CITY FROM CONDITIONING THE PROVISION OF WATER AND SEWER SERVICES TO VOLUNTARY ANNEXATION PETITIONERS UPON THE PETITIONERS AGREEING TO BE SUPPLIED WITH ELECTRICITY BY THE CITY, AND TO CREATE A MECHANISM TO FACILITATE THE RESOLUTION OF TERRITORIAL DISPUTES BETWEEN ELECTRICITY SUPPLIERS.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to electric service conflicts.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 512
PROPOSED COMMITTEE SUBSTITUTE S512-CSRU-39 [v.5]

5/24/2005 9:50:41 AM

Short Title: Electric Service Conflicts. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE PRACTICE OF CONDITIONING THE PROVISION OF WATER OR SEWER SERVICES UPON AGREEING TO BE SUPPLIED WITH ELECTRICITY, TO PRESERVE THE CORRIDOR SERVICE RIGHTS OF ELECTRIC SUPPLIERS OUTSIDE CITIES FROM BEING LOST OR DILUTED DUE TO EXTRATERRITORIAL SERVICES BY CITIES, AND TO ADDRESS OTHER ELECTRIC TERRITORY ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding new sections to read:

"**§ 75-39. Conditioning services on electric service prohibited.**

(a) No municipality or other provider of water or sewer services may offer, or agree to provide, extend, enhance or accelerate the provision of water or sewer services, or facilities or other municipal services or facilities, to any person in consideration of that person or another person agreeing to receive electric service from the municipality or another electric supplier.

(b) No municipality or other provider of water or sewer services may refuse to provide, or threaten or act to deny, delay or terminate the provision of, water or sewer services or facilities, or other municipal services or facilities, to any person as a result of, or in an attempt to influence, the choice of an electric supplier by that person or another person.

(c) A violation of this section by any municipality or other provider of water or sewer services shall constitute an unfair method of competition and an unfair act or practice under G.S. 75-1.1."

SECTION 2. G.S. 160A-331 reads as rewritten:

"**§ 160A-331. Definitions.**

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

...

(2) "Line" means any conductor located inside the ~~city~~ city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, ~~other than~~except as follows:

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such ~~premises, and~~premises.

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

...

(5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or more consumers other than itself within the limits of a ~~city~~ city, or that has a conductor located within 300 feet of an area annexed by a city that is ~~but is not~~ a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

SECTION 3. Part 2 of Article 16 of Chapter 160A of the General Statutes is amended by adding new sections to read:

"**§ 160A-331.1. Protection of certain corridors inside and outside cities.**

(a) Notwithstanding any other provisions of this Article, conductors used or to be used for the distribution or transmission of electricity by a city that is a primary supplier, which conductors are located or constructed outside the corporate limits of the city on or after June 30, 2005, shall be subject to the following additional restrictions:

(1) Such conductors cannot be used to serve any premises initially requiring electric service after June 30, 2005, which premises are located wholly or partially within 300 feet of any conductor used for the distribution or transmission of electricity by any electric supplier, as defined by G.S. 62-110.2, if the conductor of the electric supplier was constructed before the conductor of the city was constructed, or

replaces a conductor of the electric supplier that was constructed before the conductor of the city was constructed.

(2) Such conductors may be used to serve any premises initially requiring electric service after June 30, 2005, which premises are located wholly or partially within 300 feet of any conductor used for the distribution or transmission of electricity by any electric supplier, as defined in G.S. 62-110.2, but only if (i) the conductor of the city was constructed, or replaces a conductor that was constructed, before the conductor of the electric supplier was constructed, and (ii) the consumer chooses to use the electric services of the city to serve the premises.

(b) Notwithstanding any other sections of this Part, after annexation of all or any part of a conductor of an electric supplier, which conductor had restricted the provision of city electric service to premises outside the city under subdivision (a)(1) of this section, the city shall have no authority to initiate service to any premises located wholly or partially within 300 feet of the protected conductor of the affected electric supplier.

(c) Nothing in this section shall enlarge, reduce, alter or affect in any way the authority of a city that is a primary supplier to furnish electric service to city facilities, or to continue the provision of electric service to those premises being served by the city before June 30, 2005.

"**§ 160A-331.2. Agreements of electric suppliers.**

The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city."

SECTION 4. G.S. 160A-332(a) is amended by adding a new subdivision to read:

"(6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice that the consumer may be entitled to choose another electric supplier

for the premises, shall lose the right to initiate service to those premises."

SECTION 5. G.S. 160A-332 is amended by adding a new subsection to read:

"(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute that the provision of service by the current supplier is unlawful, the primary supplier or secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within thirty days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees."

SECTION 6. G.S. 117-10.2 reads as rewritten:

"**§ 117-10.2. Restriction on municipal service.**

Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-331.1, 160A-331.2, 160A-332, and 160A-333. ~~An~~ In addition, an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

SECTION 8. This act becomes effective July 1, 2005 and applies to areas for annexations that are commenced on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 512

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S512-ARU-34 [v.4]

Date 5-31 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S512-CSRU-39 [v.5]

Senator ~~Clodfelter~~ NESBITT

moves to amend the bill on page 2, line 34 through page 3, line 20, by rewriting the lines to read:

"**§ 160A-331.1. Construction of lines between June 1, 2005 and May 31, 2007.**

During the period beginning June 1, 2005 and ending May 31, 2007, a city shall not construct or extend an electric distribution line outside of its corporate limits, as of June 1, 2005, in territory assigned to an electric membership corporation by the North Carolina Utilities Commission without the written consent of the electric membership corporation. Provided, however, that the consent of an electric membership corporation shall not be required in connection with the proposed construction of an electric distribution line solely to serve a facility owned by a city. The electric membership corporation shall give its consent unless the electric membership corporation, in good faith, believes that the construction of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of the electric distribution line in the proposed location is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the electric membership corporation to give its written consent shall be submitted to prelitigation mediation in accordance with the provisions of Section 7A-38.3B."; and

on page 3, line 22 by rewriting the line to read:

"(a) The General Assembly finds and determines that, in order to avoid the unnecessary"; and

on page 3, lines 37 and 38, by inserting the following new subsection between the lines to read:

"(b) During the period beginning June 1, 2005 and ending May 31, 2007, electric membership corporations and cities that own and maintain their own electric distribution lines shall undertake good faith negotiations concerning the provision of future electric services within areas outside of the corporate limits of such cities as of June 1, 2005, and the development of agreements relating to the provision of electric services, the location of lines, and the areas within which electric services may be provided by such electric suppliers. To the extent such negotiations produce any agreements between the affected electric suppliers, such agreements shall be submitted to the North Carolina Utilities Commission for approval under this section. To the extend such negotiations do not produce an agreement and disputes among the suppliers remain as of May 31, 2007, such disputes shall be resolved pursuant to the provisions of G.S. 7A-38.3(i)."; and

on page 4, line 1, by rewriting the line to read:

"for the premises, shall not have the right to serve those"; and

on page 4, line 32 and 33, by rewriting the lines to read:

"**SECTION 8.** Article 2 of Chapter 117 of the General Statutes is amended by adding a new section to read:

"**§ 117-10.3. Construction of lines between June 1, 2005 and May 31, 2007.**

During the period beginning June 1, 2005 and ending May 31, 2007, an electric membership corporation shall not construct or extend an electric distribution line in territory assigned to it by the North Carolina Utilities Commission without the written consent of the municipality that owns and maintains its own electric system whose corporate limits, as of June 1, 2005, are within three miles of any part of the line or extension proposed to be constructed by the electric membership corporation. The municipality shall give its consent unless the municipality, in good faith, believes that the construction or extension of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of that part of the electric distribution line in the proposed

location within three miles of the city is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the municipality to give its written consent shall be submitted to prelitigation mediation in accordance with the provisions of Section 7A-38.3B.'

SECTION 9. Article 5 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-38.3B. Prelitigation mediation of territorial disputes.**

(a) Purpose. – The General Assembly finds that a system of mediated settlement conferences should be established to facilitate the settlement of territorial disputes between certain electric suppliers. Therefore, this section is enacted to require those electric suppliers and their representatives to participate in mediation conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G. S. 7A-38.2 and rules and standards adopted pursuant to those sections.

(b) Definitions. – As used in this section, the following terms mean:

(1) Electric Supplier. – Any electric membership corporation, or any municipality that owns, operates and maintains its own electric system.

(2) Mediated settlement conference. – A conference of electric suppliers and their representatives conducted by a mediator.

(3) Mediation. – An informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a territorial dispute. A mediator does not make an award or render a judgment as to the merits of the action.

(5) Territorial Dispute. – A disagreement between electric providers over (i) the right to serve premises located in areas outside of or within municipal limits, (ii) the failure of a municipality to give its written consent to the construction of an electric distribution line by an electric membership corporation pursuant to the provisions of G. S. 117-10.3, or (iii) the failure of an electric membership corporation to give its written consent to the construction of an electric distribution line by a municipality pursuant to the provisions of G. S. 160A-331.1.

(c) Voluntary Mediation. – The parties to a territorial dispute may agree at any time to mediation of the dispute under the provisions of this section.

(d) Mandatory Mediation. – In lieu of commencing a civil action involving a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1, an electric supplier shall initiate mediation pursuant to this section. If an electric supplier brings an action involving such a territorial dispute, that action shall, upon motion of any party prior to trial, be dismissed without prejudice by the court.

(e) Initiation of Mediation. – Mediation of a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1 shall be initiated by filing a request for mediation with the clerk of superior court in a county in which a civil action between the electric suppliers could have been brought. The filing of such a request for mediation shall commence a special proceeding in the superior court. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(f) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the applicable provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections, as supplemented and modified by this section. The Supreme Court may adopt additional rules and standards to implement this section.

(g) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting. In the event the parties waive mediation, then they shall proceed as provided in subsection (i) of this section.

(h) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (g) of this section or upon the conclusion of mediation, the

mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section. If an agreement is not reached at the mediation, the parties shall proceed under subsection (i) of this section. If an agreement is reached at the mediation, the parties shall reduce its terms to writing and shall sign it. A proposed consent order incorporating the signed agreement shall be filed with the court within 14 days after the agreement is signed, and such order shall be entered by the court. Subject to the provisions of subsection (k) of this section, the signed agreement and consent order shall be binding on the parties and shall conclude the special proceeding.

(i) Binding Decision – If an agreement was not reached as a result of mediation or if mediation is waived pursuant to subsection (g) of this section, the electric suppliers shall submit their territorial dispute to a member of the Public Staff of the North Carolina Utilities Commission who shall have the authority to issue an opinion resolving the territorial dispute that is binding on the parties. If the parties do not agree on the selection of a member of the Public Staff, the Executive Director of the Public Staff shall appoint a member of the Public Staff to hear the territorial dispute and render an opinion. The opinion resolving the dispute shall be considered in the nature of an arbitrator's award and may be enforced in the same manner as an arbitration award under G.S. 1-569.25.

(j) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a territorial dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section.

(k) Agreements Approved – Any agreement reached as a result of mediation pursuant to this section that involves or relates to an electric supplier subject to the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 512

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

S512-ARU-34 [v.4]

territorial jurisdiction of the North Carolina Utilities Commission shall be subject to the approval of the Commission under G.S. 160A-331.2."

SECTION 10. This act becomes effective July 1, 2005.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 512
PROPOSED COMMITTEE SUBSTITUTE S512-PCS35234-RU-39

Short Title: Electric Service Conflicts. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE PRACTICE OF CONDITIONING THE PROVISION OF WATER OR SEWER SERVICES UPON AGREEING TO BE SUPPLIED WITH ELECTRICITY, TO PRESERVE THE CORRIDOR SERVICE RIGHTS OF ELECTRIC SUPPLIERS OUTSIDE CITIES FROM BEING LOST OR DILUTED DUE TO EXTRATERRITORIAL SERVICES BY CITIES, AND TO ADDRESS OTHER ELECTRIC TERRITORY ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding new sections to read:

"**§ 75-39. Conditioning services on electric service prohibited.**

(a) No municipality or other provider of water or sewer services may offer, or agree to provide, extend, enhance or accelerate the provision of water or sewer services, or facilities or other municipal services or facilities, to any person in consideration of that person or another person agreeing to receive electric service from the municipality or another electric supplier.

(b) No municipality or other provider of water or sewer services may refuse to provide, or threaten or act to deny, delay or terminate the provision of, water or sewer services or facilities, or other municipal services or facilities, to any person as a result of, or in an attempt to influence, the choice of an electric supplier by that person or another person.

(c) A violation of this section by any municipality or other provider of water or sewer services shall constitute an unfair method of competition and an unfair act or practice under G.S. 75-1.1."

SECTION 2. G.S. 160A-331 reads as rewritten:

"**§ 160A-331. Definitions.**

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

...

(2) "Line" means any conductor located inside the ~~city~~ city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, ~~other than~~except as follows:

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such ~~premises, and~~premises.

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

...

(5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or more consumers other than itself within the limits of a ~~city~~ city, or that has a conductor located within 300 feet of an area annexed by a city that is ~~but is not~~ a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

SECTION 3. Part 2 of Article 16 of Chapter 160A of the General Statutes is amended by adding new sections to read:

"**§ 160A-331.1. Construction of lines between June 1, 2005, and May 31, 2007.**

During the period beginning June 1, 2005, and ending May 31, 2007, a city shall not construct or extend an electric distribution line outside of its corporate limits, as of June 1, 2005, in territory assigned to an electric membership corporation by the North Carolina Utilities Commission without the written consent of the electric membership corporation. Provided, however, that the consent of an electric membership corporation shall not be required in connection with the proposed construction of an electric distribution line solely to serve a facility owned by a city. The electric membership corporation shall give its consent unless the electric membership corporation, in good faith, believes that the construction of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable

supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of the electric distribution line in the proposed location is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the electric membership corporation to give its written consent shall be submitted to prelitigation mediation in accordance with the provisions of G.S. 7A-38.3B.

"**§ 160A-331.2. Agreements of electric suppliers.**

(a) The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries, or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city.

(b) During the period beginning June 1, 2005, and ending May 31, 2007, electric membership corporations and cities that own and maintain their own electric distribution lines shall undertake good faith negotiations concerning the provision of future electric services within areas outside of the corporate limits of such cities as of June 1, 2005, and the development of agreements relating to the provision of electric services, the location of lines, and the areas within which electric services may be provided by such electric suppliers. To the extent such negotiations produce any agreements between the affected electric suppliers, such agreements shall be submitted to the North Carolina Utilities Commission for approval under this section. To the extent such negotiations do not produce an agreement and disputes among the suppliers remain as of May 31, 2007, such disputes shall be resolved pursuant to the provisions of G.S. 7A-38.3(i)."

SECTION 4. G.S. 160A-332(a) is amended by adding a new subdivision to read:

"(6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice

that the consumer may be entitled to choose another electric supplier for the premises, shall not have the right to serve those premises."

SECTION 5. G.S. 160A-332 is amended by adding a new subsection to read:

"(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute that the provision of service by the current supplier is unlawful, the primary supplier or secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within thirty days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees."

SECTION 6. G.S. 117-10.2 reads as rewritten:

"**§ 117-10.2. Restriction on municipal service.**

Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-331.1, 160A-331.2, 160A-332, and 160A-333. ~~An~~ In addition, an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

SECTION 8. Article 2 of Chapter 117 of the General Statutes is amended by adding a new section to read:

"**§ 117-10.3. Construction of lines between June 1, 2005, and May 31, 2007.**

During the period beginning June 1, 2005, and ending May 31, 2007, an electric membership corporation shall not construct or extend an electric distribution line in territory assigned to it by the North Carolina Utilities Commission without the written consent of the municipality that owns and maintains its own electric system whose corporate limits, as of June 1, 2005, are within three miles of any part of the line or extension proposed to be constructed by the electric membership corporation. The municipality shall give its consent unless the municipality, in good faith, believes that the construction or extension of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action

and locations, construction of that part of the electric distribution line in the proposed location within three miles of the city is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the municipality to give its written consent shall be submitted to prelitigation mediation in accordance with the provisions of G.S. 7A-38.3B."

SECTION 9. Article 5 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-38.3B. Prelitigation mediation of territorial disputes.**

(a) Purpose. – The General Assembly finds that a system of mediated settlement conferences should be established to facilitate the settlement of territorial disputes between certain electric suppliers. Therefore, this section is enacted to require those electric suppliers and their representatives to participate in mediation conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections.

(b) Definitions. – As used in this section, the following terms mean:

(1) Electric supplier. – Any electric membership corporation, or any municipality that owns, operates, and maintains its own electric system.

(2) Mediated settlement conference. – A conference of electric suppliers and their representatives conducted by a mediator.

(3) Mediation. – An informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a territorial dispute. A mediator does not make an award or render a judgment as to the merits of the action.

(5) Territorial dispute. – A disagreement between electric providers over (i) the right to serve premises located in areas outside of or within municipal limits, (ii) the failure of a municipality to give its written consent to the construction of an electric distribution line by an electric membership corporation pursuant to the provisions of G.S. 117-10.3, or (iii) the failure of an electric membership corporation to give its written consent to the construction of an electric distribution line by a municipality pursuant to the provisions of G.S. 160A-331.1.

(c) Voluntary Mediation. – The parties to a territorial dispute may agree at any time to mediation of the dispute under the provisions of this section.

(d) Mandatory Mediation. – In lieu of commencing a civil action involving a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1, an electric supplier shall initiate mediation pursuant to this section. If an electric supplier brings an action involving such a territorial dispute, that action shall, upon motion of any party prior to trial, be dismissed without prejudice by the court.

(e) Initiation of Mediation. – Mediation of a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1 shall be initiated by filing a request for mediation with the clerk of superior court in a county in which a civil action

between the electric suppliers could have been brought. The filing of such a request for mediation shall commence a special proceeding in the superior court. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(f) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the applicable provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections, as supplemented and modified by this section. The Supreme Court may adopt additional rules and standards to implement this section.

(g) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting. In the event the parties waive mediation, then they shall proceed as provided in subsection (i) of this section.

(h) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (g) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section. If an agreement is not reached at the mediation, the parties shall proceed under subsection (i) of this section. If an agreement is reached at the mediation, the parties shall reduce its terms to writing and shall sign it. A proposed consent order incorporating the signed agreement shall be filed with the court within 14 days after the agreement is signed, and such order shall be entered by the court. Subject to the provisions of subsection (k) of this section, the signed agreement and consent order shall be binding on the parties and shall conclude the special proceeding.

(i) Binding Decision. – If an agreement was not reached as a result of mediation or if mediation is waived pursuant to subsection (g) of this section, the electric suppliers shall submit their territorial dispute to a member of the Public Staff of the North Carolina Utilities Commission who shall have the authority to issue an opinion resolving the territorial dispute that is binding on the parties. If the parties do not agree on the selection of a member of the Public Staff, the Executive Director of the Public

Staff shall appoint a member of the Public Staff to hear the territorial dispute and render an opinion. The opinion resolving the dispute shall be considered in the nature of an arbitrator's award and may be enforced in the same manner as an arbitration award under G.S. 1-569.25.

(j) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a territorial dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section.

(k) Agreements Approved. – Any agreement reached as a result of mediation pursuant to this section that involves or relates to an electric supplier subject to the territorial jurisdiction of the North Carolina Utilities Commission shall be subject to the approval of the Commission under G.S. 160A-331.2."

SECTION 10. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 952

Short Title:	Motor Vehicle Repair Consumer Protection.	(Public)
Sponsors:	Senators Lucas, Bingham; and Kinnaird.	
Referred to:	Commerce.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY PROHIBITING COERCIVE AND DISCRIMINATORY PRACTICES IN THE REPAIR OF MOTOR VEHICLES AND AUTOMOBILE GLASS REPAIR AND REPLACEMENT, BY PROVIDING FOR MORE CONSUMER DISCLOSURE BY INSURERS IN THE COLLISION REPAIR PROCESS, AND BY IMPOSING STRICTER MOTOR VEHICLE DAMAGE AND AUTOMOBILE GLASS REPAIR REGULATIONS AND PENALTIES ON INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180 reads as rewritten:

"**§ 58-3-180. Motor vehicle repairs; selection by ~~claimant.~~claimant; prohibited practices; penalties.**

(a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the ~~damage.~~damage, including the repair service or source for the repair or replacement of automobile glass.

(b) The amount determined by the insurer to be payable under a policy covering damage to a motor vehicle shall be paid regardless of the repair service or source selected by the claimant.

(b1) No insurer or insurer representative ~~shall~~ shall:

(1) Suggest or recommend the use of a particular motor vehicle repair service or a particular automobile glass repair or replacement service unless a referral is expressly requested by the claimant. ~~without clearly informing the claimant that (i) the claimant is under no obligation to use the recommended repair service, (ii) the claimant may use the repair service of the claimant's choice, (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service, and (iv) that the insurer or insurer representative has, at the time the~~

~~recommendations are made, a financial interest in the recommended motor vehicle repair service.~~

(2) Own or hold a controlling interest in either a motor vehicle repair service or an automobile glass repair or replacement service that performs services arising from automobile insurance claims.

(3) Make or issue, or cause to be issued, any written or oral statement that willfully misrepresents a motor vehicle repair service or automobile glass repair or replacement service or that willfully disparages a motor vehicle repair service or automobile glass repair or replacement service chosen by the claimant as to the quality, cost, conditions, or benefits of using the particular repair service chosen by the claimant.

(4) Discriminate against a claimant or claimant's chosen motor vehicle repair service or automobile glass repair or replacement service in any way whatsoever.

(5) Refuse to acknowledge a claimant's choice of a motor vehicle repair service or automobile glass repair or replacement service.

(6) Refuse to insure or continue to insure an individual or limit the amount, extent, or kind of coverage available to the individual due to the claimant's choice of a motor vehicle repair service or automobile glass repair or replacement service.

(7) Limit or discount the reasonable basis of the repair cost based on charges that would have been incurred had the motor vehicle been repaired by the insurer's suggested or recommended repair service, if the claimant elects to have the motor vehicle repaired at a repair service of that person's choice.

~~No insurer shall require that the insured or claimant must have a damaged vehicle repaired at an insurer-owned motor vehicle repair service.~~

(b2) If the insurer or insurer representative suggests or recommends a particular motor vehicle repair service or automobile glass repair or replacement service to the claimant, the insurer shall inform the claimant that (i) the insurer is prohibited by law from requiring that the repairs be done by a specific motor vehicle repair service or automobile glass repair or replacement service, (ii) the claimant is under no obligation to use the recommended repair service, (iii) the claimant may use the repair service of the claimant's choice, (iv) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service, (v) the damaged motor vehicle will be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the insurance policy or otherwise allowed by law, (vi) the claimant should contact the insurer if the claimant experiences a problem with the repair of the motor vehicle or the repair or replacement of the automobile glass, (vii) the insurer is receiving discounts under a direct repair contract, if applicable, and (viii) the insurer or insurer representative has, at the time the recommendations are made, a financial interest in the recommended motor vehicle repair service or automobile glass repair or replacement service, if applicable.

If the insurer makes an oral recommendation of a particular motor vehicle repair service or automobile glass repair or replacement service and the claimant accepts the recommendation, the insurer shall provide the information required by this subsection in writing in no less than 10-point type within five calendar days from acceptance of the oral recommendation. The provisions of ~~subsection (b1) of this section~~ this subsection shall be included in nonfleet private passenger motor vehicle insurance policy forms promulgated by the Bureau and approved by the Commissioner.

(c) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-46, provided that the maximum civil penalty that can be assessed under G.S. 58-2-70(d) for a violation of this section is ~~two thousand dollars ($2,000).~~ five thousand dollars ($5,000). A violation of this section includes:

(1) Alluding to or suggesting that the insurer will participate in the warranty of or guarantee of repairs by a recommended motor vehicle repair service or automobile glass repair or replacement service, unless the insurer has in writing expressly exercised the option to repair as allowed in the insurance policy. Once the insurer has exercised the option to repair, the insurer shall then assume full warranty and liability for the repairs.

(2) Implying or suggesting that a motor vehicle repair service or automobile glass repair or replacement service chosen by the claimant is somehow inferior or inconvenient to a repair service on the insurer's list of repair services.

(3) Typing of services. – Unless it is in accordance with the insurance policy or applicable law, no person shall imply, suggest, or allude that the insurer's option to pay for the claimant's losses in money shall be compromised or in any way diminished if the claimant chooses to use the repair service of that person's choice.

(4) Failure to disclose to the claimant at the time that the insurer or insurer representative recommends the use of a designated repair service in connection with settling or paying any claim arising under a policy of insurance that the insurer has agreed to discounts or concessions in parts, labor, materials, or procedures as specified by the insurer that is not transferable to the claimant, if the concessions or discounts do not exist.

(5) Any act of coercion or intimidation causing or intending to cause any licensed motor vehicle repair service or automobile glass repair or replacement service to violate this section.

Violators of this section are liable for damages suffered by the claimant or repair service, including attorneys' fees.

(d) As used in this section, "insurer representative" includes an insurance agent, limited representative, broker, adjuster, ~~and appraiser.~~ appraiser, third-party administrator, or any person acting either directly or indirectly on behalf of an insurer."

SECTION 2. G.S. 58-2-70(d) reads as rewritten:

"(d) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (c) of this section, the penalty shall not be less than ~~one hundred dollars ($100.00) nor more than one thousand dollars ($1,000).~~ five hundred dollars ($500.00) nor more than five thousand dollars ($5,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State."

SECTION 3. G.S. 58-63-15(2) reads as rewritten:

"(2) False Information and Advertising Generally. – Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance ~~business,~~ business, motor vehicle repair business, or automobile glass repair or replacement business, which is untrue, deceptive or misleading."

SECTION 4. G.S. 58-63-15(3) reads as rewritten:

"(3) Defamation. – Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of ~~insurance.~~insurance or in the business of motor vehicle repair or automobile glass replacement or repair."

SECTION 5. G.S. 58-63-15(4) reads as rewritten:

"(4) Boycott, Coercion and Intimidation. – Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of ~~insurance.~~insurance or in the business of motor vehicle repair or automobile glass replacement or repair."

SECTION 6. G.S. 58-63-15 is amended by adding a new subdivision to read:

"(14) Fraudulent, coercive, or dishonest practices. – Using fraudulent, coercive, or dishonest practices in the settlement of a claim or

demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State, including acts for which an insurance producer license is denied or suspended."

SECTION 7. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-39. Restrictions on motor vehicle repair and automobile glass repair or replacement.**

(a) No person, business, or other legal entity doing business in this State that installs, repairs, or replaces automobile glass knowingly shall engage in any of the following acts:

(1) Offer to finance payment of a customer's deductible on terms different from terms offered to customers not making an insurance claim.

(2) Engage in a pattern or practice, on more than an occasional or isolated instance, of promising or offering to provide any credit, incentive, gift, rebate, or special financing arrangement in satisfaction of all or part of an insurance deductible or co-payment owed by the insured under a policy of insurance.

(3) Advertise, promote, or represent by any media, telemarketers, or others, that services are 'free' if in fact an insurer will pay for the service or advertise or make offers for the purpose of soliciting a claim against a property or casualty insurer.

(4) Engage in a pattern or practice, on more than an occasional or isolated instance, of offering to defer collection of, discount, or issue a repayment of a customer's deductible based in whole, or in part, on the availability of insurance coverage.

(b) No insurer or insurer representative as that term is defined in G.S. 58-3-180 knowingly shall require a claimant to have a damaged vehicle repaired at a particular motor vehicle repair service.

(c) A violation of this section shall be considered an unfair trade practice, as prohibited by G.S. 75-1.1.

(d) Any person who suffers an economic loss as a result of the violation of this section may bring an action to recover damages in the General Court of Justice. Actions brought pursuant to this section shall be tried in the county where the violation occurred or in any county where the defendant resides or conducts, transacts, or has transacted business."

SECTION 8. This act becomes effective October 1, 2005.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 11:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Smith	Four County EMC P.O. Box 667 Bunnlevel, NC 28425
Calvin Duncan	Brunswick Elec. Shallotte
Dee Arnason	Roanoke EMC Rich Square, NC
Chester J. Debnath, Jr.	Roanoke EMC Rich Square, N.C. 27869
Bryant Herring	Tom County Electric Elizabethtown, N.C. Burgaw, N.C.
Everette Winslow	REC Rich Square 27869
Millard Lee	REC Rich Square 27869
Johnnie Pharr	REC 1314 Carolina Heights Rd Roanoke Rapids NC

VISITOR REGISTRATION SHEET

S-1
Name of Committee

5/31/05
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVE Rowe	Randolph EMC
Fred Smith	Randolph EMC
Jay Albright	Randolph EMC
Mike Arp	Roger's Ground
Eddie Stokes	Edgecombe Martin EMC
[illegible]	Edgecombe - Martin Cnty EMC
Ed Dubsch	Tideland EMC -
Rachel Rawlins	Piedmont EMC
Wayne Wilkins	Energy United EMC
Edward Borches	City Manager, City of Rocky Mount
Bob Gillam	Public Staff - NCUC
John [illegible]	[illegible]
Mark R. Ch	Roanoke Electric

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 11:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elaine Cunningham	Union Power Co-op, Monroe, NC
Jeff Edwards	Albemarle EMC, Hertford NC
Bradley V Turn	Albemarle EMC, Hertford, NC.
[illegible]	Albemarle EMC
KEVIN SANDERS	TOWN OF MAIDEN
ED MILLER	CITY OF GASTONIA
JIM MANGUM	WAKE EMC
DIRK BURLESON	Rutherford EMC
RANDY WARD	Rutherford EMC
PAULA B. POPE	BLUE RIDGE ELECTRIC
Renée Whitener	Blue Ridge Electric
Grey Scheer	Blue Ridge Electric

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 11:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Carsley	MFES
Norman Holden	City of Southport - E. Cities
Paul Taylor	City of Southport - E. Cities
Phil Bazemore	Monroe, NC
BRUCE Simmons	PEE DEE Electric Membership
Wilkie Overby	Energy United Coop - Statesville
Jeannette Overby	Energy United Coop - Statesville
Fran Burbage	Tideland EMC - Pantego NC
TONY HERRIN	Union Power Cooperative
Luann Sherrer	Union Power Cooperative Monroe, NC
B. J. Lance	Union power Coop - Monroe NC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 11:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Hatley	Hatley Jr
Randy Breedlove	Piedmont EMC
George Stamper	Edgecombe-Martin EMC
Heidi Jernigan Strickland	Tideland EMC, Pantego
Henry Patterson	Patterson Harkavy LLP
Wayne Z. Brooks	TIDELAND EMC - Grantsboro.
	Greenville Utilities Greenville, NC
David Williams	Wake EMC Wake Forest, NC
Mary Waber	Energy United
Dennis D Brown	Energy United Statesville, NC
Charles Hedrick	Energy United Lexington, NC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 11:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
B. Allen Smith	Energy United, Statesville N.C.
Ryan Wyatt	Energy United
Stan McFarland	Energy United
Jerry D. Smith	Energy United / NC Statesville
Ronnie S. Harrison	
KEN RABOR.	ELECTRICITIES of NC INC
Gene AINSWORTH	AINSWORTH & ASSOCIATES
Bob L McDuffie	Edgecombe-Martin EMC
Carolyn Childers	NCEMC
Curtis Wynn	Roanoke Electric Cooperative
Hubert Brittain	Brunswick EMC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 31, 2005, 11:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard H. Johnson	NC Electric Coop.
Richard N. Hicks	Town of Farmville
Robert S Elsen	Town of Farmville
Lonnie Spivey	Pee Dee Electric, Wadesboro NC
Andrew Meehan	NC Assn Elec. Co-ops
Ron George	City of Morganton
T. Alan Conrad	City of Lexington
Mark Petersen	Electricities of NC
Robert Cheney	Town of Tarboro
[illegible]	KCLH
[illegible]	Roanoke E. Pa. Dist

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JACK F. NEEL	NCMPA#1 / City of Albemarle
Jesse Tilton	Electricities, Raleigh, NC
SUSAN VALAURI	NW
[illegible]	IPNC
Robert PASchal	Yvnw, Marc
BILL THOLE	JORDAN PRICE
JAY RUSS	NC Electric Cooperatives
Sheila Talton-DeWitt	JWPCivitas Institute
K. McBride	NCAA
[illegible]	Pappas + Sprouse
[illegible]	South Rivers EMC
Catherine O'Dell	South River EMC
LYNN TEW	South River EMC
LOR. ANN HARRIS	NCAEC
A. Mark Short	Energy United, Statesville, N.C
[illegible]	Piedmont Elect MC
Kathleen Edwards	UNC-CH Legis Reporting Service
Vivian Jones	Town of Wake Forest
Joyce Peters	JP Assoc
[illegible]	JD, AL, P.A.
[illegible]	CFSA
Richard L Thomas	Mayor - City of Lexington
Catherine Peters	Electric Cities
Harold Smith	City of Laurinburg
Jimmie Boyd	City of New Bern - Electric Utilities
Ralph Puckett	" " " Bd of Dir Electrics
Sam Noble	Town of Tarboro
Neal Hicks	Lee Dee Elec.

Senate Commerce Committee
Wednesday, June 1, 2005, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 441	Ashe Co./ Wind-Powered Generation.	Senator Garwood
SB 602	Permit DOT Best-Value Procurement.-AB	Senator Jenkins

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Wednesday, June 1, 2005 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 a.m. on June 1, 2005, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized the pages: Chris Archer of Holly Springs, sponsored by Senator Richard Stevens; Chris Morrow of Lake Junaluska, sponsored by Senator Keith Presnell; Lennon Dodson of Stoneville, sponsored by Senator Phil Berger; and Taylor Warren of Wake Forest, sponsored by Senator Marc Basnight.

Senator Soles recognized Senator Jim Jacumin who, having voted with the majority on the committee substitute for SB 441, Ashe Co./Wind-Powered Generation, moved to have the vote by which the committee substitute was given an unfavorable report reconsidered. The motion carried. Senator Soles then announced the bill would be re-referred to the Rules Committee.

Senator Soles recognized Senator Clark Jenkins to present SB 602, Permit DOT Best-Value Procurement-AB. Senator Tony Rand moved the adoption of a committee substitute for the purposes of discussion. The motion carried. Senator Jenkins explained the committee substitute. Senator John Kerr made additional remarks of explanation. Senator Soles recognized Mr. Jim Talton, Chair of the Board of Trustees of Eastern Carolina University (ECU), representing the Chancellor, to speak about the situation at the University. Representatives Edith Warren, Roger West and Marian McLawhorn spoke in favor of the legislation. Mr. Jim Long, Commissioner of Insurance explained the legislation from the point of view of the Department of Insurance. Mr. Lawrence Jones, General Counsel, Special Risk Division of Wachovia Insurance Services, spoke to the issue of self-insurance. Senator John Kerr moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

The meeting adjourned at 9:30 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 01, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **602** Permit DOT Best-Value Procurement.-AB

Draft Number:	PCS 65338
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 441

Short Title:	Ashe Co./ Wind-Powered Generation.	(Local)
Sponsors:	Senator Garwood.	
Referred to:	Commerce.	

March 9, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING ASHE COUNTY TO USE WIND-POWERED ELECTRICITY GENERATION PROJECTS ON MOUNTAIN RIDGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-206 reads as rewritten:

"**§ 113A-206. Definitions.**

Within the meaning of this Article:

...

(3) "Tall buildings or structures" include any building, structure or unit within a multiunit building with a vertical height of more than 40 feet measured from the top of the foundation of said building, structure or unit and the uppermost point of said building, structure or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. "Tall buildings or structures" do not include:

a. Water, radio, telephone or television towers or any ~~equipment~~ equipment, including wind-powered electricity generators, for the generation or transmission of electricity or communications or both."

SECTION 2. This act applies to Ashe County only.

SECTION 3. This act is effective when it becomes law.

SENATE BILL 441: Wind-Powered Generation

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 26, 2005
Introduced by:	Sen. Garwood	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition S441-CSRU-34		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 441 would amend the Mountain Ridge Protection Act to permit the construction of wind-powered generation systems under certain circumstances.***

CURRENT LAW: Current law allows local governments to adopt ordinances governing the development of certain tall buildings on mountain ridges in order to protect the environment and esthetics of the mountain ridge. A mountain ridge is defined as the top 100 feet of a peak that is 3000 feet elevation, more than 500 feet above the adjacent valley floor. Exempted from the definition of tall buildings are water, radio, telephone or television towers or equipment for the transmission of electricity or communications, and structures of a slender nature including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires and windmills.

BILL ANALYSIS:

Section 1 of the bill adds definitions to the Mountain Ridge Protection Act. It defines "small wind energy system" (a system that generate less than 100kW of power, are 150 feet tall or less, and have a rotor diameter of 80 feet or less), "utility scale wind energy system" (wind conversion system capable of generating more than 100kW of power), and "windmills" (wind powered generator for mechanical or electrical energy production.

Section 2 sets out the procedure for the approval of small wind energy systems and utility scale wind energy systems under the Mountain Ridge Protection Act.

G.S. 113A-209.1 allows a small wind energy system permit to be issued for a wind turbine system that meets the criteria set out in this section, including a maximum height of 150 feet, noise generated to no more than 5 decibels above background noise measured from the nearest residence for wind speeds below 22 mph, and compliance with all building codes, electrical codes and Federal Aviation Authority regulations.

G.S. 113A-209.2 sets out the permitting process for the construction of a utility scale wind power project. These projects may only be build in counties that have Class 4 or higher wind density (wind speeds between 14 and 15.7 mph), are either a Tier 1, 2, or 3 county under the William S. Lee Act, have a population density of 80 persons or less per square mile, and have adopted an ordinance by August 31, 2005 authorizing the permitting of these types of systems. The permitting process requires compliance with any certificate of need requirements of the Utilities Commission, a one-year environmental impact analysis, and a plan for decommissioning the project. The county is required to give public notice of a permit application and hold a public hearing prior to granting a permit.

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

§ 113A-206. Definitions.

Within the meaning of this Article:

(1) The word "person" includes any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

(2) A person, as defined in this section, doing business or maintaining an office within a county is a resident of the county.

(3) "Tall buildings or structures" include any building, structure or unit within a multiunit building with a vertical height of more than 40 feet measured from the top of the foundation of said building, structure or unit and the uppermost point of said building, structure or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. "Tall buildings or structures" do not include:

a. Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both.

b. Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills.

c. Buildings and structures designated as National Historic Sites on the National Archives Registry.

(4) "Construction" includes reconstruction, alteration, or expansion.

(5) "Ridge" means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

(6) "Protected mountain ridges" are all mountain ridges whose elevation is 3,000 feet and whose elevation is 500 or more feet above the elevation of an adjacent valley floor; provided, however, that a county, or a city with a population of fifty thousand (50,000) or more, may elect to eliminate the requirement for an elevation of 3,000 feet, and such election shall apply both to an ordinance adopted under G.S. 113A-208 and the prohibition against construction under G.S. 113A-209; provided, further, that such ordinance shall be adopted pursuant to the procedures of G.S. 113A-208.

(7) "Crest" means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

§ 113A-207. Legislative findings.

The construction of tall or major buildings and structures on the ridges and higher elevations of North Carolina's mountains in an inappropriate or badly designed manner can cause unusual problems and hazards to the residents of and to visitors to the mountains. Supplying water to, and disposing of the sewage from, buildings at high elevations with significant numbers of residents may infringe on the ground water rights and endanger the health of those persons living at lower elevations. Providing fire protection may be difficult given the lack of water supply and pressure and the possibility that fire will be fanned by high winds. Extremes of weather can endanger buildings, structures, vehicles, and persons. Tall or major buildings and structures located on ridges are a hazard to air navigation and persons on the ground and detract from the natural beauty of the mountains.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 441
PROPOSED COMMITTEE SUBSTITUTE S441-CSRU-34 [v.6]

5/25/2005 5:56:52 PM

Short Title: Wind-Powered Generation. (Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE USE OF WIND-POWERED ELECTRICITY GENERATION PROJECTS ON MOUNTAIN RIDGES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-206 reads as rewritten:

"**§ 113A-206. Definitions.**

Within the meaning of this Article:

...

(8) "Small wind energy system" is a wind turbine system consisting of a wind turbine, tower, and associated control or conversion electronics, which has a rated capacity of not more than 100kW, a total height from ground level to the tip of the rotor at its highest point of 150 feet or less, and a rotor diameter of 80 feet or less.

(9) "Utility scale wind energy system" is any individual or group of individual wind conversion systems, consisting of a wind turbine, tower, and associated control or conversion electronics, which has a rated capacity greater than 100kW.

(10) "Windmills" includes any wind-powered generator for either mechanical or electrical energy production."

SECTION 2. Article 14 of Chapter 113A is amended by adding the following new sections to read:

"**§ 113A-209.1. Small wind energy systems.**

(a) Small wind energy systems that comply with the provisions of subsection (b) of the section shall be permitted as an allowable use by right under this Article.

(b) The following standards and restrictions shall apply for small wind energy systems authorized under this section:

(1) Minimum parcel size of one acre.

(2) Maximum allowable tower heights of 150 feet.
(3) Setbacks no closer than one and one-half times the total length of the turbine tower to the property boundary, as measured from the base of the tower to the fully extended blade tip.
(4) The mean value of the sound pressure level from a small wind energy system shall not exceed more than 5 decibels above background noise, as measured at the exterior of the closest neighboring inhabited dwelling, for wind speeds below 22 mph (10m/s) and except during short-term events including utility outages and severe wind storms.
(5) Automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure in the tower structure, rotor blades, and turbine components or enclosed shelter.
(6) Lightning protection.
(7) Compliance with the Uniform Building Code where applicable with standard drawings and certification by a licensed engineer or manufacturer. Wet stamp is not required.
(7) Compliance with the National Electric Code with sufficient detail line drawings of electrical components.
(8) Notification of the utility of intent to install an interconnected wind generator.
(9) Compliance with the Federal Aviation Authority requirements. Small wind energy systems shall not be artificially lighted except as required by the Federal Aviation Authority.

(c) No other local ordinance, policy, or regulation shall be the basis to deny the siting and operation of a small wind energy system. Small wind energy systems shall not be subject to further permitting procedures as set forth in G.S. 113-209.2. Small wind energy systems that do not meet the criteria set forth in this section shall require a conditional use permit.

(d) The county may charge a small wind energy system-permitting fee of fifty dollars ($50.00).

"**§ 113A-209.2. Utility scale wind power projects.**

(a) Projects shall be permitted under this Article in accordance with this section when the project is located in a county that meets all of the following criteria:
(1) Demonstrates Class 4 or higher wind power density, between 14 mph (6.4 m/s) and 15.7 mph (7 m/s).
(2) Is designated as a Tier 1, 2, or 3 county under G.S. 105-129.3.
(3) Has a population density equal to or less than 80 persons per square mile according to the 2000 federal census.
(4) Is in a county that as of August 31, 2005 has adopted an ordinance permitting wind-powered generation projects in accordance with this section.

(b) A person seeking a site permit for a project shall file three copies of the application for the site permit with the county planning board for review prior to

acceptance of the application. A person filing an application for a site permit for a project shall provide the county planning board with a copy of the application in a format requested by the county commission, suitable for posting on the county government website. An applicant may request that the county planning board waive this requirement completely or for part of the application if an electronic version of the application is difficult or expensive for the applicant to obtain. An applicant for a site permit for a wind-powered generation project may certify that certain information in the application is trade secret information or other protected data or information that is not available to the public.

(c) An applicant for a site permit must provide the following background information regarding the applicant:

(1) A letter of transmittal signed by an authorized representative or agent of the applicant.

(2) The complete name, address, and telephone number of the applicant and any authorized representative.

(3) The signature of the person who prepared the application, if prepared by an agent or consultant of the applicant.

(4) The role of the permit applicant in the construction and operation of the project.

(5) The identity of any other project located in the State in which the applicant, or a principal of the applicant, has an ownership or other financial interest; the operator of the project if different from the applicant; and the name of the person or persons to be the permittee if a site permit is issued.

(d) The applicant shall state in the application whether a certificate of need for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule for obtaining the certificate of need. The board of commissioners shall not issue a site permit for a project for which a certificate of need is required until the applicant obtains the certificate, although the county planning board may process the application while the certificate of need request is pending before the Utilities Commission. The county planning board may ask the Utilities Commission to determine whether a certificate of need is required for a particular project for which the county planning board has received a site permit application. If a certificate of need is not required from the Utilities Commission, the permit applicant shall include with the application a discussion of what the applicant intends to do with the power that is generated. If the applicant has a power purchase agreement or some other enforceable mechanism for sale of the power to be generated by the project, the applicant shall provide the county planning board with a copy of the document upon the request.

(e) The applicant shall describe in the application how the proposed project furthers State policy to site such projects in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

(f) The permit applicant shall include the following information about the site proposed for the project and any associated facilities:

(1) The boundaries of the site proposed for the project, which must be delineated on a United States Geological Survey Map or other map as appropriate.

(2) The location of other wind turbines in the general area of the proposed wind power project.

(3) The applicant's wind rights within the boundaries of the proposed site.

(g) The permit applicant shall provide the following information regarding the design of the proposed project:

(1) A project layout, including a map showing the proposed array spacing of the turbines.

(2) A description of the turbines and towers and other equipment to be used in the project, including the name of the manufacturers of the equipment.

(3) A description of the project electrical system, including transformers at both low voltage and medium voltage.

(4) A description and location of associated facilities.

(h) An applicant for a site permit shall include with the application an analysis of the potential impacts of the project after gathering data for at least one year, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:

(1) Demographics, including people, homes, and businesses.

(2) Noise.

(3) Visual impacts.

(4) Public services and infrastructure.

(5) Cultural and archaeological impacts.

(6) Recreational resources.

(7) Public health and safety, including air traffic, electromagnetic fields, and security and traffic.

(8) Hazardous materials.

(9) Land-based economics, including agriculture, forestry, and mining.

(10) Tourism and community benefits.

(11) Topography.

(12) Soils.

(13) Geologic and groundwater resources.

(14) Surface water and floodplain resources.

(15) Wetlands.

(16) Vegetation.

(17) Avian, including an avian impact analysis of at least one year that includes a literature review, interviews with local and regional experts (agency staff, environmental organizations, and local birders) and site visits conducted by a trained wildlife biologist. The analysis report shall provide an indication of the type and number of birds that are known or suspected to use a project site and the area surrounding that site.

(18) Wildlife.

(19) Rare and unique natural resources.

Site permits for adjacent, contiguous, or nearby sites may use preexisting environmental assessment data at the determination of the county planning board, without the need for one-year data collection.

The analysis of the environmental impacts required in this subsection satisfies the environmental review requirements of Article 1 of Chapter 113A of the General Statutes. No additional environmental assessment worksheet or environmental impact statement shall be required on a proposed project.

(i) The permit applicant shall describe all of the following:

(1) The manner in which the project, including associated facilities, will be constructed.

(2) How the project will be operated and maintained after construction, including a maintenance schedule.

(3) The estimated costs of design and construction of the project and the expected operating costs.

(4) The anticipated schedule for completion of the project, including the time periods for land acquisition, obtaining a site permit, obtaining financing, procuring equipment, and completing construction. The applicant shall identify the expected date of commercial operation.

(5) The energy expected to be generated by the project.

(j) The permit applicant shall include the following information regarding decommissioning of the project and restoring the site:

(1) The anticipated life of the project.

(2) The estimated decommissioning costs in current dollars.

(3) The method and schedule for updating the costs of decommissioning and restoration.

(4) The method of ensuring that funds will be available for decommissioning and restoration.

(5) The anticipated manner in which the project will be decommissioned and the site restored.

(k) The permit applicant shall include in the application a list of all known federal, state, and local agencies or authorities, and titles of the permits they issue that are required for the proposed project.

(l) The county planning board and the board of commissioners of the county shall take the following actions:

(1) Within 30 days after receipt of an application for a site permit, the county planning board shall accept, conditionally accept, or reject the application. If the county planning board conditionally accepts or rejects an application, the county planning board shall advise the applicant in writing of the deficiencies in the application and the manner in which the deficiencies can be addressed. Upon refiling of a revised application, the county planning board shall again act on the application within 30 days after receipt.

(2) Within 15 days after the county planning board accepts an application, the permit applicant shall provide notice of the application to each municipality and township board in the county where the project is proposed to be located and shall publish notice of the application in a newspaper of general circulation in the county. Failure to give this notice or a delay in providing this notice shall constitute cause to repeal the county planning board's recommended acceptance of the application or may result in a delay in the effective date of the recommended acceptance. The county planning board may elect to give the notice required in this subsection instead of requiring the applicant to provide the notice.

(3) Upon acceptance of the application by the county planning board, the county planning board shall advise the applicant of how many additional copies of the application to submit to the county planning board. The applicant shall also provide a copy of the document of notice to each landowner within and adjoining the boundaries of the proposed project site. The applicant shall maintain a list of all persons to whom copies of the application are provided.

(4) Within 60 days after recommended acceptance of the application by the county planning board, the county board of commissioners shall make a preliminary determination of whether the permit may be issued or should be denied. If the preliminary determination is to issue a permit, the county planning board shall prepare a draft site permit for the project. The draft site permit must identify the person or persons who will be the permittee, describe the proposed project, and include proposed permit conditions. A draft site permit does not authorize a person to construct a project. The county board of commissioners, upon the recommendation of the county planning board, may change the draft site permit in any respect before final issuance of the permit or it may deny the site permit.

(m) Upon preparation of a draft site permit, the county planning board shall provide public notice of the draft site permit. The public notice shall include all of the following:

(1) The name and address of the applicant for the site permit.

(2) A concise description of the proposed project.

(3) The location where a copy of the site permit application may be reviewed and how a copy of the application may be obtained.

(4) A statement of the availability of the draft site permit.

(5) The time and place of a public information meeting.

(6) A statement that during the comment period any person may submit comments to the county planning board on the draft site permit, a statement of the dates on which the comment period commences and terminates, and a statement that any person may request an appearance before the county planning board on the matter.

(7) A brief description of the anticipated procedures for reaching a final decision on the permit application.

The county planning board shall publish the notice in newspapers with circulation in each municipality in which the proposed project is to be located. The county planning board shall also mail the public notice to those persons known to the county planning board and the county board of commissioners to be interested in the proposed project, including governmental officials in municipality in which the project is proposed to be located.

(n) The county board of commissioners shall afford the public a minimum of 30 days after publication of the draft site permit notice to submit written comments to the county planning board. The board of commissioners may extend the public comment period if necessary to afford the public adequate time to review the application and other pertinent information in order to formulate complete comments on the draft site permit and the project.

(o) The board of commissioners shall act to approve or reject the draft site permit within 30 days of the comment period including any proposed modifications. The board shall consult with the applicant during this period to ensure that the applicant has adequate time to respond. This period may be extended by mutual agreement of the board and the applicant.

(p) As used in this section, the term "project' means a utility scale wind energy system project authorized by this section."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 602*

Short Title:	Permit DOT Best-Value Procurement.-AB	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	State and Local Government.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE DEPARTMENT OF TRANSPORTATION TO AWARD CONTRACTS ON ALTERNATE BIDDING PROCEDURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.1 is amended by adding a new subsection to read:

"(l) The Board of Transportation may award up to 10 contracts annually for construction of transportation projects or for maintenance of existing facilities with defined parameters to provide the best value for the project in terms of time, quality, and cost. The award shall be made only after a determination by the Department of Transportation that it is in the public interest and that construction of the project or maintenance of any existing facility using the innovative methods will result in delivery of the project or maintenance activities in an expedited and more cost-efficient manner than could be achieved using the normal contracting methods. Prior to the award of a contract pursuant to this subsection, during the construction of such project or implementation of the maintenance contract, and following the completion of the contract, the Secretary of Transportation shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations on the nature and scope of the contract and the reasons the development of each contract on a best-value basis will best serve the public interest and performance measures regarding the success of these contracts."

SECTION 2. This act becomes effective July 1, 2005.

SENATE BILL 602:
Liability Insurance for State Employees

BILL ANALYSIS

Committee:	Rules and Operations of the Senate	**Date:**	May 31, 2005
Introduced by:	Sen. Jenkins	**Summary by:**	Tim Hovis
Version:	PCS to First Edition S602-CSRG		Committee Counsel

SUMMARY: Senate Bill 602 would add a new section to Article 40 of Chapter 58 of the General Statutes governing the regulation of professional liability insurance rates for State departments, agencies, institutions and State employees and officers. The bill would also establish a committee to adopt criteria for and establish a list of professional liability insurance carriers from which the Public Officers and Employees Liability Insurance Commission and the Commissioner of Insurance may acquire professional liability insurance.

BILL ANALYSIS: **Section 1** of the bill requires that any rate, form, or filing actually used by an insurer to calculate a premium for professional liability insurance for State hospitals, agencies, universities, colleges, institutions and State employees and officers shall be presumed to be excessive if the payment of premiums exceed the insurer's actual paid and incurred loss and loss expense for the policy period, plus a reasonable allowance for unallocated expenses and a reasonable margin for the insurer's underwriting profit.

Upon a written request by the Attorney General to the Commissioner and the insurer for a hearing, the insurer is prohibited from collecting the premium without the express written approval of the Commissioner following the hearing.

A hearing may be held at the Commissioner's own motion, or at the request of the Attorney General to determine if the rate is excessive, inadequate, or unfairly discriminatory under G.S. 58-40-20. If, following the hearing, the Commissioner disapproves a rate, the Commissioner must specify the grounds for the disapproval. If the rate is found to be excessive, the Commissioner must order the excess premium, plus interest, to be paid to the insured. If the rate is found to be unfairly discriminatory, the Commissioner must order an appropriate adjustment for policyholders.

An insurer is prohibited from charging or collecting, or attempting to charge or collect any premium or fee which is not in accordance with this section.

Individual rates developed as a result of a unique risk may be used by an insurer in accordance with existing rules established by the Commissioner, but these rules do not eliminate the filing requirement of any rate or form. If a rate is charged or an attempt to collect a rate is made as a unique risk under G.S. 58-41-50(g) and no prior hearing is held, an insurer subject to this section must, upon demand by the Attorney General, refund or credit any excessive profit, as determined by the Commissioner. This section applies to any period of continuous coverage pursuant to a multi-year agreement.

Section 2 amends Article 32 of Chapter 58 governing the Public Officers and Employees Liability Insurance Commission. Under current law, the Commission is authorized to acquire professional liability insurance for officers and employees of any State department, institution, or agency.

Section 2 would establish a committee consisting of the Administrator of the Commission, a designee of the Attorney General, and a designee of the Governor to adopt criteria for the selection of insurance carriers from which the Commission may acquire professional liability insurance. The Governor's

designee must be a State employee that uses professional liability insurance and all members must be elected for their knowledge of professional liability insurance. Factors to be considered by the Committee include:

- Size and strength of the carrier
- Experience and expertise of the carrier
- Past experience of State officers and employees with the carrier
- Past experience of the carrier with consumer complaints
- Failure to perform in accordance with past State contracts for professional liability insurance
- A history of failure to perform or unsatisfactory performance of one or more State professional liability insurance contracts
- Past experience of the carrier with respect to lawsuits or disputes with the State concerning rates and coverage
- Any other factor that a reasonably knowledgeable person would consider in determining whether to place professional liability insurance with a carrier

The Commission is prohibited from acquiring insurance from a carrier that is not included on a list of carriers adopted by the committee.

Section 3 makes amends existing law to require the Commissioner of Insurance, when acquiring insurance through the Public Officers and Employees Liability Insurance Commission, to adhere to the requirements of this act when selecting a professional liability insurance carrier.

EFFECTIVE DATE: Senate Bill 602 is effective when it becomes law and applies to pending litigation and arbitration proceedings.

S0602e1-SMRG-CSRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 602*
PROPOSED COMMITTEE SUBSTITUTE S602-CSRG-23 [v.4]

5/31/2005 4:55:12 PM

Short Title: Liability Insurance for State Employees. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO PROFESSIONAL LIABILITY OF STATE EMPLOYEES AND AGENCIES.

Whereas, it is in the public policy of this State for State departments, agencies, educational institutions, and hospitals to purchase professional liability insurance; and

Whereas, the rates charged for professional liability insurance should be regulated to the end that the rates shall not be excessive, inadequate, or unfairly discriminatory; and

Whereas, the public interest requires that existing legislation should be amended to clarify and make certain the intent of existing legislation and to clarify, strengthen, and provide adequate remedies to the State to ensure that rates being charged and collected from State agencies, educational institutions, and hospitals for professional liability insurance pursuant to filings of rates and forms under Chapter 58 of the General Statutes are not excessive in violation of the standards in effect at the time the rates were charged; and

Whereas, the public interest requires that State departments, agencies, educational institutions, and hospitals should have the opportunity for a hearing on the reasonableness of rates charged for professional liability insurance to prevent the collection of rates that are found to be excessive and to clarify that a refund shall be provided for any rate found to be excessive which has been charged or collected;

Now therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 40 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-40-145. Professional liability insurance for State departments, agencies, and institutions and State employees and officers.**

(a) Any rate, form, or filing actually used by an insurer to calculate a premium to be charged or collected as the final premium in a retrospective rating plan for professional liability insurance for State hospitals, agencies, universities, colleges,

institutions, and State employees and officers, which would result in the payment of premiums or charges by an insured which exceed the insurer's actual paid and incurred loss and loss expense for the policy period, plus a reasonable allowance for unallocated expenses and a reasonable margin for an underwriting profit of the insurer for the policy period, shall be presumed to be excessive within the meaning of G.S. 58-40-20. In the event of the receipt by the Commissioner and the insurer of a written demand from the Attorney General on behalf of the insured for a hearing thereon, the insurer shall not collect or attempt to collect the premium, rate, or charge without the express written approval of the Commissioner following a hearing at which the parties to the policy may be heard and present evidence.

(b) On the Commissioner's own motion, the Commissioner may hold a hearing and, at the request of the Attorney General on behalf of the insured, the Commissioner shall hold a hearing, to determine if a rate filed pursuant to this Article and Article 41 of this Chapter for professional liability insurance for State hospitals, agencies, universities, colleges, institutions, and their employees and officers complies with the requirements of G.S. 58-40-20. If, after a hearing, the Commissioner disapproves a rate, the Commissioner must issue an order specifying in what respects the rate fails to meet the requirements of G.S. 58-40-20. If the Commissioner finds a rate to be excessive, the Commissioner shall order the excess premium, plus interest at a rate determined in the same manner as in G.S. 58-36-25(b) as of the dates the rates were effective for policyholders, to be returned to those policyholders who have paid the excess premium. If the Commissioner finds a rate to be unfairly discriminatory, the Commissioner shall order an appropriate adjustment for policyholders who have paid the unfairly discriminatory premium. The order must be issued within 30 business days after the close of the hearing.

(c) An insurer is prohibited from charging or collecting or attempting to charge or collect, any premium or any additional fee or charge for professional liability insurance for State hospitals, agencies, universities, colleges, institutions, and State employees and officers except in accordance with filings made with the Commissioner under this section and Article 41 of this Chapter. This section may be enforced by the Commissioner and by the Attorney General against any insurer charging, collecting, or attempting to charge or collect the premium.

(d) An insurer providing professional liability insurance for State hospitals, agencies, universities, colleges, institutions, and State employees and officers which was developed and used in individual form or rate as the result of the uniqueness of a particular risk, may file and use such rates and forms in accordance with rules adopted by the Commissioner pursuant to G.S. 58-41-50(g). Provided, however, that those rules shall not be interpreted to eliminate the requirement for the filing of any rate or form which affects the premium or charge collected or attempted to be collected, from an insured. With respect to any rate charged or attempted to be collected by an insurer pursuant to the filings, if there has been no prior hearing on the rates and filings before the Commissioner, each insurer which issues or has issued policies pursuant to G.S. 58-41-50(g) which are subject to this section shall, upon demand by the Attorney General on behalf of the insureds under the policies, refund, or otherwise credit to those

purchasing the policies any excessive profit, as determined by the Commissioner after a hearing pursuant to the standards set policies, including retrospective premiums, during any period of consecutive, continuous coverage pursuant to a multi-year agreement."

SECTION 2. G.S. 58-32-15 is amended by adding a new subsection to read:

"(e) A committee is hereby established to adopt criteria for the selection of insurance carriers from which the Commission may acquire professional liability insurance for State employees and officers under this section. The committee shall consist of three members, including the Administrator of the Commission, a designee of the Attorney General, and a designee of the Governor who is also an employee of a State agency that utilizes professional liability insurance. All members of the committee shall be elected for their knowledge of professional liability insurance. In adopting criteria for the selection of insurance carriers from which the Commission may acquire professional liability insurance for State officers and employees, due consideration shall be given by the committee to the following factors:

(1) The size and financial strength of the insurance carrier.

(2) The experience and expertise of the insurance carrier in the particular line of professional liability insurance for which coverage is to be placed.

(3) The past experience of State officers and employees with the insurance carrier with respect to the reasonableness of premiums charged, policy service, loss prevention programs, and the sharing of information with risk managers of State departments, institutions, agencies, universities, and community colleges.

(4) The past experience of the insurance carrier with consumer complaints.

(5) A willful failure to perform in accordance with one or more insurance contracts of professional liability insurance for State officers and employees or agencies.

(6) A history of failure to perform, or unsatisfactory performance of, one or more contracts of professional liability insurance entered into for the coverage of State officers and employees or agencies.

(7) The past experience of the insurance carrier with respect to lawsuits or disputes with State officials or agencies concerning rates charged or coverage provided to State officers and employees or agencies.

(8) Any other factor that a person reasonably knowledgeable about professional liability insurance would consider in determining whether to place insurance with an insurance carrier.

The committee shall apply these criteria in the evaluation of prospective insurance carriers for professional liability insurance for State employees, officers, and agencies, and shall prepare and maintain a list of approved insurance carriers. The Commission shall not acquire professional liability insurance under this Article except from an insurance carrier which currently appears on the list adopted by the committee pursuant to this section.

The committee shall meet at least once each calendar quarter, on the first business day after January 15, April 15, July 15, and October 15, and upon the call of the Administrator of the Commission. The Administrator of the Commission shall be responsible for issuing notices of meetings of the committee and maintaining the books and records of the proceedings of the committee. Members of the committee shall be reimbursed for travel and subsistence expenses at rates set out in G.S. 138-6 from funds made available to the Commission for the reimbursement of the committee members. There is no liability of, and no cause of action of any nature arises against, the members of the committee or of the Commission for the performance of their powers and duties under this section."

SECTION 3. G.S. 58-31-25 reads as rewritten:

"**§ 58-31-25. Professional liability insurance for officials and employees of the State.**

The Commissioner may acquire professional liability insurance covering the officers and employees of any State department, institution or agency upon the request of such State department, institution or ~~agency.~~ agency in accordance with G.S. 58-32-15. Premiums for such insurance coverage shall be paid by the requesting department, institution or agency at rates fixed by the Commissioner in accordance with G.S. 58-40-145 and from funds made available to it for the purpose. The Commissioner, in placing a contract for such insurance is authorized to place such insurance through the Public Officers and Employees' Liability Insurance Commission, and shall exercise all efforts to place such insurance through the said commission prior to attempting to procure such insurance through any other source.

The Commissioner, pursuant to this section, may acquire professional liability insurance covering the officers and employees of a department, institution or agency of State government only if the coverage to be provided by such policy is coverage of claims in excess of the protection provided by Articles 31 and 31A of Chapter 143 of the General Statutes.

The purchase, by any State department, institution or agency of professional liability insurance covering the law-enforcement officers, officers or employees of such department, institution or agency shall not be construed as a waiver of any defense of sovereign immunity by such department, institution or agency. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

The payment, by any State department, institution or agency of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or officials or employees of such department, institution or agency is hereby declared to be for a public purpose."

SECTION 4. This act is effective when it becomes law and applies to pending litigation and arbitration proceedings.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 602*
PROPOSED COMMITTEE SUBSTITUTE S602-PCS65338-RG-23

Short Title: Liability Insurance for State Employees. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO PROFESSIONAL LIABILITY OF STATE EMPLOYEES AND AGENCIES.

Whereas, it is in the public policy of this State for State departments, agencies, educational institutions, and hospitals to purchase professional liability insurance; and

Whereas, the rates charged for professional liability insurance should be regulated to the end that the rates shall not be excessive, inadequate, or unfairly discriminatory; and

Whereas, the public interest requires that existing legislation should be amended to clarify and make certain the intent of existing legislation and to clarify, strengthen, and provide adequate remedies to the State to ensure that rates being charged and collected from State agencies, educational institutions, and hospitals for professional liability insurance pursuant to filings of rates and forms under Chapter 58 of the General Statutes are not excessive in violation of the standards in effect at the time the rates were charged; and

Whereas, the public interest requires that State departments, agencies, educational institutions, and hospitals should have the opportunity for a hearing on the reasonableness of rates charged for professional liability insurance to prevent the collection of rates that are found to be excessive and to clarify that a refund shall be provided for any rate found to be excessive which has been charged or collected; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 40 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-40-145. Professional liability insurance for State departments, agencies, and institutions and State employees and officers.**

(a) Any rate, form, or filing actually used by an insurer to calculate a premium to be charged or collected as the final premium in a retrospective rating plan for professional liability insurance for State hospitals, agencies, universities, colleges, institutions, and State employees and officers which would result in the payment of premiums or charges by an insured which exceed the insurer's actual paid and incurred loss and loss expense for the policy period, plus a reasonable allowance for unallocated expenses and a reasonable margin for an underwriting profit of the insurer for the policy period, shall be presumed to be excessive within the meaning of G.S. 58-40-20. In the event of the receipt by the Commissioner and the insurer of a written demand from the Attorney General on behalf of the insured for a hearing thereon, the insurer shall not collect or attempt to collect the premium, rate, or charge without the express written approval of the Commissioner following a hearing at which the parties to the policy may be heard and present evidence.

(b) On the Commissioner's own motion, the Commissioner may hold a hearing and, at the request of the Attorney General on behalf of the insured, the Commissioner shall hold a hearing to determine if a rate filed pursuant to this Article and Article 41 of this Chapter for professional liability insurance for State hospitals, agencies, universities, colleges, institutions, and their employees and officers complies with the requirements of G.S. 58-40-20. If, after a hearing, the Commissioner disapproves a rate, the Commissioner must issue an order specifying in what respects the rate fails to meet the requirements of G.S. 58-40-20. If the Commissioner finds a rate to be excessive, the Commissioner shall order the excess premium, plus interest at a rate determined in the same manner as in G.S. 58-36-25(b) as of the dates the rates were effective for policyholders, to be returned to those policyholders who have paid the excess premium. If the Commissioner finds a rate to be unfairly discriminatory, the Commissioner shall order an appropriate adjustment for policyholders who have paid the unfairly discriminatory premium. The order must be issued within 30 business days after the close of the hearing.

(c) An insurer is prohibited from charging or collecting, or attempting to charge or collect, any premium or any additional fee or charge for professional liability insurance for State hospitals, agencies, universities, colleges, institutions, and State employees and officers except in accordance with filings made with the Commissioner under this section and Article 41 of this Chapter. This section may be enforced by the Commissioner and by the Attorney General against any insurer charging, collecting, or attempting to charge or collect the premium.

(d) An insurer providing professional liability insurance for State hospitals, agencies, universities, colleges, institutions, and State employees and officers which was developed and used in individual form or rate as the result of the uniqueness of a particular risk, may file and use such rates and forms in accordance with rules adopted by the Commissioner pursuant to G.S. 58-41-50(g). Provided, however, that those rules shall not be interpreted to eliminate the requirement for the filing of any rate or form which affects the premium or charge collected or attempted to be collected from an insured. With respect to any rate charged or attempted to be collected by an insurer pursuant to the filings, if there has been no prior hearing on the rates and filings before

the Commissioner, each insurer which issues or has issued policies pursuant to G.S. 58-41-50(g) which are subject to this section shall, upon demand by the Attorney General on behalf of the insureds under the policies, refund, or otherwise credit to those purchasing the policies any excessive profit, as determined by the Commissioner after a hearing pursuant to the standards set policies, including retrospective premiums, during any period of consecutive, continuous coverage pursuant to a multiyear agreement."

SECTION 2. G.S. 58-32-15 is amended by adding a new subsection to read:

"(e) A committee is hereby established to adopt criteria for the selection of insurance carriers from which the Commission may acquire professional liability insurance for State employees and officers under this section. The committee shall consist of three members, including the Administrator of the Commission, a designee of the Attorney General, and a designee of the Governor who is also an employee of a State agency that utilizes professional liability insurance. All members of the committee shall be elected for their knowledge of professional liability insurance. In adopting criteria for the selection of insurance carriers from which the Commission may acquire professional liability insurance for State officers and employees, due consideration shall be given by the committee to the following factors:

(1) The size and financial strength of the insurance carrier.

(2) The experience and expertise of the insurance carrier in the particular line of professional liability insurance for which coverage is to be placed.

(3) The past experience of State officers and employees with the insurance carrier with respect to the reasonableness of premiums charged, policy service, loss prevention programs, and the sharing of information with risk managers of State departments, institutions, agencies, universities, and community colleges.

(4) The past experience of the insurance carrier with consumer complaints.

(5) A willful failure to perform in accordance with one or more insurance contracts of professional liability insurance for State officers and employees or agencies.

(6) A history of failure to perform, or unsatisfactory performance of, one or more contracts of professional liability insurance entered into for the coverage of State officers and employees or agencies.

(7) The past experience of the insurance carrier with respect to lawsuits or disputes with State officials or agencies concerning rates charged or coverage provided to State officers and employees or agencies.

(8) Any other factor that a person reasonably knowledgeable about professional liability insurance would consider in determining whether to place insurance with an insurance carrier.

The committee shall apply these criteria in the evaluation of prospective insurance carriers for professional liability insurance for State employees, officers, and agencies and shall prepare and maintain a list of approved insurance carriers. The Commission shall not acquire professional liability insurance under this Article except from an

insurance carrier which currently appears on the list adopted by the committee pursuant to this section.

The committee shall meet at least once each calendar quarter, on the first business day after January 15, April 15, July 15, and October 15, and upon the call of the Administrator of the Commission. The Administrator of the Commission shall be responsible for issuing notices of meetings of the committee and maintaining the books and records of the proceedings of the committee. Members of the committee shall be reimbursed for travel and subsistence expenses at rates set out in G.S. 138-6 from funds made available to the Commission for the reimbursement of the committee members. There is no liability of, and no cause of action of any nature arises against, the members of the committee or of the Commission for the performance of their powers and duties under this section."

SECTION 3. G.S. 58-31-25 reads as rewritten:

"**§ 58-31-25. Professional liability insurance for officials and employees of the State.**

The Commissioner may acquire professional liability insurance covering the officers and employees of any State department, institution or agency upon the request of such State department, institution or ~~agency.~~ agency in accordance with G.S. 58-32-15. Premiums for such insurance coverage shall be paid by the requesting department, institution or agency at rates fixed by the Commissioner in accordance with G.S. 58-40-145 and from funds made available to it for the purpose. The Commissioner, in placing a contract for such insurance is authorized to place such insurance through the Public Officers and Employees' Liability Insurance Commission, and shall exercise all efforts to place such insurance through the said commission prior to attempting to procure such insurance through any other source.

The Commissioner, pursuant to this section, may acquire professional liability insurance covering the officers and employees of a department, institution or agency of State government only if the coverage to be provided by such policy is coverage of claims in excess of the protection provided by Articles 31 and 31A of Chapter 143 of the General Statutes.

The purchase, by any State department, institution or agency of professional liability insurance covering the law-enforcement officers, officers or employees of such department, institution or agency shall not be construed as a waiver of any defense of sovereign immunity by such department, institution or agency. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

The payment, by any State department, institution or agency of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or officials or employees of such department, institution or agency is hereby declared to be for a public purpose."

SECTION 4. This act is effective when it becomes law and applies to pending litigation and arbitration proceedings.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 1, 2005, 9:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Molly Diggis	Sierra Club
Kim Dalton	ECU
Larry Shirley	State Energy Office
Kathy Hawkins	Progress Energy
K.H. Wetherington	ECU
M.J. Lewis	ECU
Erin Kinney	NC Conservation Network
Alissa Dolan	NC Conservation Network
Lawrence Davis	ECU
ANN LOVE	OUNJ

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 1, 2005, 9:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Mosby	Gov office
Sheila Talton-DeWitt	JLW Civitas Institute
Kary Isenhour	Sen P. Berger's office
Robert Paschal	Young, Moore
R. Paul Wilms	NCHBA
Carl Goodwin	OSP
Jim Long	NCDOI
Courtney Crowder	NCDOI
Lee Hadley	KCLH
Andy Ellen	NCRMA
Alastair Macaulay	NCHBA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 1, 2005, 9:00 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Klotz	League of Women Voters

Senate Commerce Committee
Tuesday, June 7, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 534	High Risk Insurance Pool.	Senator Berger
SB 1120	Improve Real Estate Licensing Law.	Senator Rand
HB 658	Code Officials Professionalism.-AB	Representative Holliman
HB 670	CDL/Federal Compliance	Representative Cole
HB 672	Reduce Holding Period for Unclaimed Property.-AB	Representative Holliman
HB 859	Continuing Education of Mortgage Brokers.	Representative Brubaker Representative LaRoque Representative Church, Sr.
HB 1320	Disclose Monetary Transmissions.	Representative Hackney

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 7, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on June 7, 2005, in Room 1027 of the Legislative Building. Eighteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized the pages: David Millican, Meme Summerell, Jack Moore, Jack Garvey, Jaime Gresalfi and Kelly Berry from Greensboro, sponsored by Senator Kay Hagan; Cameron Atkins of Wilmington sponsored by Senator Soles; Rachael Baer of Fayetteville, sponsored by Senator Tony Rand; and Lee Spencer and Brittney Parker of Gastonia, sponsored by Senator David Hoyle.

Senator Soles recognized Representative Nelson Cole to explain HB 670, CDL/Federal Compliance. He told the members of the committee it was an agency bill, required by federal law in order to maintain federal highway funding. Ms. Debbie Jones, Division of Motor Vehicles, answered some of the committee's questions. Senator Rand asked that an attorney well versed in the federal law come to talk about some of the provisions of the bill. The bill was displaced until a future meeting.

Senator Soles recognized Representative Hugh Holliman to explain HB 658, Code Officials Professionalism-AB. Mr. Frank Folger, Counsel for the Department of Insurance; Mr. Tim Bradley, Senior Deputy Commissioner, Engineering and Codes Division; Mr. Bucky Frye, Building Inspector for Winston-Salem and President of the North Carolina Building Inspector Association; and Mr. Ed Cianfarra, Chief Building Inspector for Goldsboro, and in charge of continuing education for the Building Inspector Association, answered questions raised by the committee. Senator Tony Rand moved for a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Joe Hackney to explain HB 1320, Disclose Monetary Transmissions. Senator Phil Berger moved for a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Holliman again, this time to explain HB 672, Reduce Holding Period for Unclaimed Property.-AB. Senator Julia Boseman moved the adoption of a committee substitute. The motion carried. Mr. Kenneth Wilkins, Department of State Treasurer, was recognized to answer committee questions. Senator Rand moved an unfavorable report of the House Committee Substitute, but favorable as to the Senate Committee Substitute. The motion carried.

Senator Phil Berger was called out of the meeting and asked that his bill, SB 534, High Risk Insurance Pool, be deferred to a later meeting. Representative Harold Brubaker requested that his bill, HB 859, Continuing Education of Mortgage Brokers, be taken off the agenda. Senator Rand asked that his bill, SB 1120, Improve Real Estate Licensing Law, be taken off the agenda.

The meeting adjourned at 11:55 a.m.

R. C. Soles, Jr.
Senator R. C. Soles, Jr., Presiding

Dot Waugaman
Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 08, 2005

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

FAVORABLE

H.B.(CS #1) **658** Code Officials Professionalism.-AB
Sequential Referral: None
Recommended Referral: None

H.B. **1320** Disclose Monetary Transmissions.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **672** Reduce Holding Period for Unclaimed Property.-AB
Draft Number: PCS 50464
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 670*

Committee Substitute Favorable 5/5/05

Short Title: CDL/Federal Compliance.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS LICENSES IN ORDER TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.
5. For purposes of disqualification of a commercial drivers license only, any prayer for judgment continued if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.

3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
5. A final conviction of a criminal offense, including a no contest plea."

SECTION 2. G.S. 20-4.01(12b) reads as rewritten:

"(12b) Gross Vehicle Weight Rating (GVWR). – The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used."

SECTION 3. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial or other motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported."

SECTION 4. G.S. 20-7(a) reads as rewritten:

"(a) License Required. – To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular

drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. – A Class A license authorizes the holder to drive any of the following:
   a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
   b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. – A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. – A Class C license authorizes the holder to drive any of the following:
   a. A Class C motor vehicle that is not a commercial motor vehicle.
   b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A person holding a commercial drivers license issued by another jurisdiction must apply for a transfer and obtain a North Carolina issued commercial drivers license within 30 days of becoming a resident. Any other ~~A~~ new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 60 days after becoming a resident."

SECTION 5. G.S. 20-15 reads as rewritten:

"**§ 20-15. Authority of Division to cancel ~~license.~~license or endorsement.**

(a) The Division shall have authority to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division.

(c) Any person whose license is canceled under this section for failure to give the required or correct information, or for committing fraud, in an application for a

commercial drivers license shall be prohibited from reapplying for a commercial drivers license for a period of 60 days from the date of cancellation.

(d) The Division shall have authority to revoke an H endorsement of a commercial drivers license holder if the person with the endorsement is determined by the federal Transportation Security Administration to constitute a security threat, as specified in 49 C.F.R. § 1572.5(d)(4). "

SECTION 6. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. – Any of the following disqualifies a person from driving a commercial motor vehicle for one year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

(1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle.

(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

(3) A first conviction of G.S. 20-166, hit and run. ~~run, involving a commercial motor vehicle driven by the person.~~

(4) A first conviction of a felony in the commission of which a commercial motor vehicle was used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license.

(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2. ~~G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.~~

(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was operating a commercial motor vehicle.

(8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle.

(9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle.

(a1) Ten-Day Disqualification. – A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. – A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as

the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. – A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. – A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. – A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a "serious violation" includes violations of G.S. 20-140(f) and G.S. 20-141(j3).

(e) Three Years. – A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. – A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is ~~revoked.~~revoked, suspended, or cancelled.

(g) Violation of Out-of-Service Order. – Any person convicted for violating an out-of-service order, except as described in subsection (h) of this section, shall be disqualified as follows:

(1) A person is disqualified from driving a commercial vehicle for a period of 90 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of one year if convicted of a second violation of an out-of-service order during any 10-year period, arising from separate incidents.

(3) A person is disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and Passenger Offenses. – Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or

used to transport more than 15 passengers, including the driver, shall be disqualified as follows:

(1) A person is disqualified for a period of 180 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(i) Disqualification for Out-of-State Violations. – The Division shall withdraw the privilege to operate a commercial vehicle of any resident of this State or person transferring to this State upon receiving notice of the person's conviction or Administrative Per Se Notice in another state for an offense that, if committed in this State, would be grounds for ~~disqualification.~~ disqualification, even if the offense occurred in another jurisdiction prior to being licensed in this State where no action had been taken at that time in the other jurisdiction. The period of disqualification shall be the same as if the offense occurred in this State.

(j) Disqualification of Persons Without Commercial Drivers Licenses. – Any person convicted of an offense that requires disqualification under this section, but who does not hold a commercial drivers license, shall be disqualified from operating a commercial vehicle in the same manner as if the person held a valid commercial drivers license.

(k) Disqualification for Railroad Grade Crossing Offenses. – Any person convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.

(2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.

(3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection.

(l) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard. – The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. § 383.52."

SECTION 7. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle,~~ Except for offenses occurring in a commercial motor vehicle, or a second failure to submit to a chemical test when

charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction."

SECTION 8. G.S. 20-37.13 reads as rewritten:

"**§ 20-37.13. Commercial drivers license qualification standards.**

(a) No person shall be issued a commercial drivers license unless he:

(1) Is a resident of this State;

(2) Is 21 years of age;

(3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle that comply with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts F, G and H; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

For the purpose of skills testing and determining commercial drivers license classification, only the manufacturer's GVWR shall be used.

The tests shall be prescribed and conducted by the Division. Provided, a person who is at least 18 years of age may be issued a commercial drivers license if he is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

(1) The test is the same as that administered by the Division; and

(2) The third party has entered into an agreement with the Division which complies with the requirements of 49 C.F.R. § 383.75. The Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(c) Prior to October 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial drivers license if:

(1) For an application submitted by April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years preceding April 1, 1992:

a. Had more than one drivers license, except during the 10-day period beginning on the date he is issued a drivers license, or unless, prior to December 31, 1989, he was required to have

more than one license by a State law enacted prior to June 1, 1986;

b. Had any drivers license or driving privilege suspended, revoked, or cancelled;

c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or

e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and

(2) The applicant certifies, and provides satisfactory evidence, that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and he either:

a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated for the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(d) A commercial drivers license or learner's permit shall not be issued to a person while he is subject to a disqualification from driving a commercial motor vehicle, or while his drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial drivers license be issued unless the person who has applied for the license first surrenders all other drivers licenses issued by the Division or by another state. If a person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

(e) A commercial driver learner's permit may be issued to an individual who holds a regular Class C drivers license and has passed the knowledge test for the class and type of commercial motor vehicle the individual will be driving. The permit is valid for a period not to exceed six months and may be renewed or reissued only once within a two-year period. The fee for a commercial driver learner's permit is the same as the fee set by G.S. 20-7 for a regular learner's permit. G.S. 20-7(m) governs the issuance of a restricted instruction permit for a prospective school bus driver."

SECTION 9. G.S. 20-37.16 reads as rewritten:

"**§ 20-37.16. Content of license; classifications and endorsements; fees.**

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL – A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL – A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL – A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. – The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials

To qualify for any of the above endorsements, an applicant shall pass a knowledge test. To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(c1) The test for an S endorsement shall be waived by the Division for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the requirements of this subsection. An applicant for a waiver under this subsection shall verify that, during the two-year period immediately prior to application for an S endorsement, the applicant met all of the following requirements:

(1) The applicant held a valid commercial drivers license with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving.

(2) The applicant did not have the applicant's drivers license or commercial drivers license suspended, revoked, or cancelled, or the applicant was not disqualified from operating a commercial motor vehicle.

(3) The applicant was not convicted of a State law offense that corresponds to the list of disqualifying offenses in 49 C.F.R. § 383.51(b) while operating a commercial motor vehicle or of any

offense in a noncommercial motor vehicle that would be a disqualifying offense under 49 C.F.R. § 383.51(b) if committed in a commercial motor vehicle.

(4) The applicant was not convicted of more than one of the serious traffic violations listed and defined in G.S. 20-4.01(41a) while operating any type of motor vehicle.

(5) The applicant was not convicted of a violation of State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.

(6) The applicant was not convicted of any motor vehicle traffic violation that resulted in an accident.

(7) The applicant was regularly employed as a school bus driver, operated a school bus representative of the group the applicant seeks to drive, and provides evidence of that employment.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.

b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.

c. Is not used in the operations of a for-hire motor carrier.

d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation.

(f) For the purposes of this section, the term "school bus" has the same meaning as in 49 C.F.R. § 383.5."

SECTION 10. G.S. 20-37.21 reads as rewritten:

"**§ 20-37.21. Penalties.**

(a) Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense. In addition, upon conviction, the person shall be subject to a civil penalty of not less than one thousand one hundred dollars ($1,100) for the first offense and not more than two thousand seven hundred fifty dollars ($2,750) for a second or subsequent offense.

(b) Any person who violates G.S. 20-37.18 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(c) Any employer who violates G.S. 20-37.19 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000). In addition, upon conviction, the employer shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) nor more than eleven thousand dollars ($11,000).

(d) An employer who knowingly allows, requires, permits, or otherwise authorizes an employee to violate any railroad grade requirements contained in G.S. 20-142.1 through G.S. 20-142.5 shall pay a civil penalty of not more than ten thousand dollars ($10,000)."

SECTION 11. G.S. 20-141(j3) reads as rewritten:

"(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed ~~in excess~~ of 15 miles per hour or more above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained."

SECTION 12. G.S. 20-142.1 reads as rewritten:

"**§ 20-142.1. Obedience to railroad signal.**

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within 50 feet, but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements apply when:

(1) A clearly visible electrical or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1500 feet of the highway crossing emits a signal audible from that distance, and the railroad train is an immediate hazard because of its speed or nearness to the crossing; or

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(c) When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic.

(d) Any person who violates any provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 13. G.S. 20-142.2 reads as rewritten:

"**§ 20-142.2. Vehicles stop at certain grade crossing.**

The Department of Transportation may designate particularly dangerous highway crossings of railroads and erect stop signs at those crossings. When a stop sign is erected at a highway crossing of a railroad, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such grade crossing and shall proceed only upon exercising due care. Any person who violates this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se. An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 14. G.S. 20-142.3 reads as rewritten:

"**§ 20-142.3. Certain vehicles must stop at railroad grade crossing.**

(a) Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any activity bus, any motor vehicle carrying passengers for compensation, any commercial motor vehicle listed in 49 C.F.R. § 392.10, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train and shall not proceed until the driver can do so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears and the driver shall not change gears while crossing the track or tracks.

(b) Except for school buses and activity buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.

(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.

(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when the gate or flashing signal does not indicate the approach of a train.

(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

(5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority.

(c) A person violating the provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(d), (e) Repealed by Session Laws 2001-487, s. 50(g).

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 15. G.S. 20-142.4 reads as rewritten:

"**§ 20-142.4. Moving heavy equipment at railroad grade crossing.**

(a) No person shall operate or move any crawler-type tractor, crane, or roller or any equipment or structure having a normal operating speed of five or less miles per hour upon or across any tracks at a railroad crossing without first complying with this section.

(b) Notice of any intended crossing described in subsection (a) of this section shall be given to a superintendent of the railroad and a reasonable time be given to the railroad to provide protection at the crossing.

(c) Before making any crossing described in subsection (a) of this section, the person operating or moving the vehicle or equipment shall:

(1) Stop the vehicle or equipment not less than 15 feet nor more than 50 feet from the nearest rail of the railroad;

(2) While stopped, shall listen and look both directions along the track for any approaching train and for signals indicating the approach of a train; and

(3) Shall not proceed until the crossing can be made safely.

(d) No crossing described in subsection (a) of this section shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

(e) Subsection (c) of this section shall not apply at any railroad crossing where State or local authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "Exempt".

(f) Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(g) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 16. G.S. 20-142.5 reads as rewritten:

"**§ 20-142.5. Stop when traffic obstructed.**

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 17. This act becomes effective September 30, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 670:
CDL/Federal Compliance.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 7, 2005
Introduced by:	Rep. Cole	**Summary by:**	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 670 would make various changes to North Carolina law applicable to commercial drivers licenses in order to comply with federal law.

BACKGROUND: The 1999 federal Motor Carrier Safety Improvement Act made numerous changes to the Commercial Drivers License program, and gave states three years to implement conforming changes to their laws. By September 30, 2005, all states are required to be in compliance with the Act and federal regulations promulgated pursuant to it, or be subject to losing 5% of their federal aid highway funds. House Bill 670 makes changes to NC law to comply with this federal mandate.

BILL ANALYSIS:

Section 1. This section would amend the definition of "Conviction" in State law to specify that, for purposes of disqualification of a commercial drivers license, a conviction includes:

- A PJC (prayer for judgment continued) granted for an offense occurring in NC, if the offender holds a commercial drivers license, or if the offense occurs in a commercial motor vehicle; and
- A final conviction, including a no contest plea, for an offense occurring out of state, if the offender holds a commercial drivers license, or if the offense occurs in a commercial motor vehicle.

Section 2. This section would amend the definition of "Gross Vehicle Weight Rating (GVWR) " in State law to provide that for purposes of commercial drivers license and skills testing, the manufacturer's GVRW shall be used.

Section 3. This section would amend the definition of "Serious Traffic Violation" in State law (used for CDL disqualification) to include the listed offenses when operating any motor vehicle.

Section 4. This section would provide that a person holding a CDL in another jurisdiction must apply for a transfer and obtain a NC issued CDL within 30 days of becoming a resident.

Section 5. This section would grant DMV the authority to:

- Prohibit a person from reapplying for a CDL for 60 days after the person's license is canceled for failure to give correct information, or for committing fraud in a CDL application; and
- Revoke an "H" (hazardous materials) CDL endorsement if the federal Transportation Security Administration determines that the holder is a security threat.

Section 6. This section would require a one-year disqualification to drive a commercial motor vehicle for any of the following:

- A first conviction of impaired driving of a vehicle that is not a commercial vehicle by a CDL holder.
- A first conviction of hit and run while driving any vehicle.

- A first conviction of a felony in which any motor vehicle was used by a CDL holder.
- Refusal to submit to a chemical test when charged with an implied consent offense while driving any vehicle.
- A civil revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was operating a commercial motor vehicle.
- A first conviction of vehicular homicide or vehicular manslaughter occurring while a person was operating a commercial motor vehicle.
- Driving a commercial motor vehicle during a period when a person's CDL is revoked, suspended or cancelled, or the driver is disqualified from operating a commercial motor vehicle.

This section would also provide:

- That a 60- or 120-day disqualification for serious traffic violations is in addition to, and shall be served at the end of, any other prior disqualifications.
- For disqualification to operate a commercial motor vehicle for an offense occurring in another jurisdiction, even if the offense occurred prior to a person being licensed in NC, and even if no action was taken in the other jurisdiction.
- For a 30-day disqualification of a driver determined to be an "imminent hazard" as defined in 49 CFR 383.5.

Section 7. This section would provide that convictions more than 10 years old for offenses in a commercial motor vehicle, and a second failure to submit to a chemical test when charged with an implied consent offense that occurred while a person was driving a commercial motor vehicle, shall be considered by DMV in determining whether a driving privilege should be suspended or revoked.

Section 8. This section would amend the commercial drivers license qualifications standards to:

- Require knowledge and skills tests as provided in 49 CFR Part 383, Subpart F; and
- Specify that the GVWR (gross vehicle weight rating) of a vehicle (not license or other weight rating) shall be used for skills testing for a commercial drivers license.

Section 9. This section would clarify that a person applying for any commercial driver license endorsement must pass a knowledge test.

Section 10. This section would increase the civil penalties for violation of G.S. 20-37.12 (CDL license requirements), G.S. 20-37.18 (CDL notification requirements), G.S. 20-37.19 (CDL employer requirements), and G.S. 20-142.1 through G.S. 20-142.5 (RR crossing statutes).

Section 11. This section would amend the State speeding statute to provide that it is a Class 2 misdemeanor for a person to drive a commercial motor vehicle with a load subject to an oversize or overweight permit 15 mph or more over the posted speed limit.

Sections 12-16. These sections would extend application of five railroad crossing offenses to employers of commercial motor vehicle drivers, by providing that any employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate one of these five statutes is guilty of an infraction (with a penalty of not more than $100), and subject to a civil penalty (of not more than $11,000).

EFFECTIVE DATE: The bill would become effective September 30, 2005, and would apply to offenses occurring on or after that date.

Giles Perry, counsel to the House Transportation Committee, substantially contributed to this summary.

H0670e2-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 658

Committee Substitute Favorable 5/4/05

Short Title: Code Officials Professionalism.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROFESSIONAL DEVELOPMENT PROGRAM FOR CODE-ENFORCEMENT OFFICIALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9C of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-151.13A. Professional development program for officials.**

(a) As used in this section, "official" means a qualified Code-enforcement official as that term is defined in G.S. 143-151.8.

(b) The Board may establish professional development requirements for officials as a condition of the renewal or reactivation of their certificates. The purposes of these professional development requirements are to assist officials in maintaining professional competence in their enforcement of the Code and to assure the health, safety, and welfare of the citizens of North Carolina. An official subject to this section shall present evidence to the Board at each certificate renewal after initial certification, that during the 12 months before the certificate expiration date, the official has completed the required number of credit hours in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board but shall not be more than six credit hours.

(c) The Board may require an individual who earns a certificate under programs established in G.S. 143-151.13 to complete professional development courses, not to exceed six hours in each technical area of certification, within one year after that individual is first employed by a city or county inspection department.

(d) As a condition of reactivating a standard or limited certificate, the Board may require the completion of professional development courses within one year after reemployment as an official as follows:

(1) An individual who has been on inactive status for more than two years and who has not been continuously employed by a city or county inspection department during the period of inactive status shall

complete professional development courses not to exceed 12 hours for each technical area in which the individual is certified.

(2) An individual who has been on inactive status for more than two years and who has been continuously employed by a city or county inspection department during the period of inactive status shall complete professional development courses not to exceed six hours for each technical area in which the individual is certified.

(3) An individual who has been on inactive status for two years or less shall complete professional development courses not to exceed four hours for each technical area in which the individual is certified.

(e) The Board may, for good cause shown, grant extensions of time to officials to comply with these requirements. An official who, after obtaining an extension under this subsection, offers evidence satisfactory to the Board that the official has satisfactorily completed the required professional development courses, is in compliance with this section.

(f) The Board may adopt rules to implement this section, including rules that govern:

(1) The content and subject matter of professional development courses.

(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.

(3) The methods of instruction.

(4) The computation of course credit.

(5) The ability to carry-forward course credit from one year to another.

(6) The waiver of or variance from the professional development required for hardship or other reasons.

(7) The procedures for compliance and sanctions for noncompliance."

SECTION 2. The Code Officials Qualification Board shall initiate development of the Code officials' professional development program established pursuant to this act no later than October 1, 2005. The program shall be developed for implementation no later than January 1, 2006.

SECTION 3. This act is effective when it becomes law and applies to certificates issued or renewed on or after January 1, 2006.

HOUSE BILL 658:
Code Officials Professionalism.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 6, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Tim Hovis
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 658 creates a professional development program for code-enforcement officials, authorizes the North Carolina Code Officials Qualification Board to establish requirements as a condition of renewal or reactivation of a code enforcement official's certificate.***

As introduced, this bill was identical to S646, as introduced by Sen. Hoyle, which is currently in Senate Appropriations/Base Budget. The appropriation has been removed from the House bill.

CURRENT LAW: Article 9C in Chapter 143 of the North Carolina General Statutes regulates the North Carolina Code Officials Qualification Board. Current standards require possession of a standard certificate, a limited certificate, or a probationary certificate for persons engaging in Code enforcement.[1] A certificate is valid as long as the certified individual annually renews the license, pays the corresponding renewal fee[2], and maintains employment in the following capacity:

- As a Code enforcement official with the State of North Carolina, or any political subdivision thereof;
- As a Code enforcement official inspecting tribal lands under G.S. 153A-350.1 employed by a federally recognized Indian Tribe.[3]

BILL ANALYSIS: House Bill 658 creates a professional development program for code-enforcement officials.

Section 1 authorizes the North Carolina Code Officials Qualification Board to adopt rules to implement professional development requirements as a condition of renewal or reactivation of a code enforcement official's certificate. In establishing annual continuing education requirements, the Board will require certified individuals to complete within one year, not more than six credit hours. The Board is authorized to grant time extensions to enable compliance.

Section2 establishes required dates for program development initiation and implementation. **See Effective Date**

EFFECTIVE DATE: House Bill 658 is effective when it becomes law and applies to certificates issued or renewed on or after January 1, 2006.

H0658e2-SMRG. This summary was substantially contributed to by Mr. Shawn Parker, Research Division.

[1] G.S.143-151.13
[2] G.S.143-151.16
[3] G.S.143-151.15

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1320

Short Title:	Disclose Monetary Transmissions.	(Public)
Sponsors:	Representative Hackney.	
Referred to:	Financial Institutions.	

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DISCLOSURES OF CERTAIN MONETARY TRANSMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-208.22A. Disclosures of transmissions.**

(a) At the time of a monetary transmission transaction to a location outside of the United States, the licensee shall provide a receipt to the customer. The receipt shall state clearly (i) the amount of funds presented for transmission and any fee charged by the licensee and (ii) a toll-free telephone number or a local number that a customer can access at no charge to receive information about a monetary transmission.

(b) If the rate of exchange for a monetary transmission to be paid in the currency of another country is fixed by the licensee for a transaction at the time the monetary transmission is initiated, the receipt shall also state:

(1) The rate of exchange for that transaction.

(2) The amount to be paid in the foreign currency.

(3) The period, if any, in which the payment shall be made in order to qualify for the fixed rate of exchange.

(c) If the rate of exchange for a monetary transmission to be paid in the currency of another country is not fixed at the time the monetary transmission is initiated, the receipt shall also disclose that the rate of exchange for the transaction will be set at the time the recipient of the monetary transmission receives the funds in the foreign country.

(d) The licensee shall provide the disclosures required by this section to the customer before completing the transaction if the customer requests the disclosures."

SECTION 2. This act becomes effective October 1, 2005, and applies to transactions occurring on or after that date.

HOUSE BILL 1320:
Disclose Monetary Transmissions

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 7, 2005
Introduced by:	Rep. Hackney	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: House Bill 1320 amends the Money Transmitter Act to require that licensees subject to the Act provide receipts to their customers containing certain disclosures for money transmitted to locations outside the United States.

CURRENT LAW:

The Money Transmitter Act requires any person who engages in the business of money transmission in the State to be licensed by the Commissioner of Banks, unless the person is exempt from the Act. The following entities are exempt: the U.S. Post Office, the State of North Carolina or its political subdivisions, banks and savings and loans, and persons registered as securities broker-dealers under federal or state securities laws.

The Act defines the term "money transmission" as (1) the sale or issuance of payment instruments or stored value, or (2) the act of engaging in the business of receiving money or monetary value for transmission within the United States or abroad by any and all means, including payment instruments, wire, facsimile, or electronic transfer.

The Act further provides that a licensee's liability to any person for a money transmission is limited to the face amount of the payment instrument purchased. However, the Commissioner may impose a civil penalty of up to $1,000 for each intentional violation of the Act. It is a Class 1 misdemeanor to knowingly and willfully makes a false statement in any document with the intent to deceive, and also to engage in the business of money transmission without a license.

BILL ANALYSIS:

This bill would add a new section to the Money Transmitter Act requiring disclosures to be made by the licensee to the customer at the time of the transaction, if the transmission is to a location outside the United States. The licensee must provide a receipt showing the amount of funds submitted for transmission and any fees charged by the licensee, as well as a toll-free number that the customer can use to receive information about the money transmission.

If the licensee at the initiation of the transaction fixes the rate of currency exchange, the receipt must also state:

- The rate of exchange.
- The amount to be paid in the foreign currency.
- The period in which the payment must be made in order to qualify for the fixed rate of exchange.

If the rate of exchange is not fixed at the time of the transmission, the receipt must disclose that the rate will be set when the recipient receives the funds in the foreign country.

Finally, if the customer requests, the licensee must provide the disclosures required by this section before completing the transaction.

EFFECTIVE DATE:

This act would become effective October 1, 2005, and apply to transactions occurring on or after that date.

BACKGROUND:

As of December 31, 2004, there are 57 licensed Money Transmitters in the State.

Karen Cochrane-Brown, counsel to House Financial Institutions Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 672*

Committee Substitute Favorable 5/4/05

Short Title: Reduce Holding Period for Unclaimed Property.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE HOLDING PERIOD FOR CERTAIN UNCLAIMED PROPERTY HELD AS STOCK OR OTHER EQUITY INTERESTS IN A BUSINESS ASSOCIATION, INCLUDING CASH DISTRIBUTIONS OF A DEMUTUALIZED INSURANCE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-53(c) reads as rewritten:

"(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after ~~issuance;~~ issuance.

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the ~~property;~~ property.

(3) Money order, cashier's check, teller's check, and certified check, seven years after ~~issuance;~~ issuance.

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, ~~five~~ three years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, ~~or~~

b. The date a second consecutive mailing, notification, or communication from the holder to the apparent owner is returned to the holder as unclaimed by or undeliverable to the apparent owner;

c. The date the holder discontinued mailings, notifications, or communications to the apparent owner.

For purposes of distributions of a demutualized insurance company under this subdivision, the date of demutualization or reorganization shall be the date of the order of demutualization or reorganization that

is rendered by the Department of Insurance and from which no further appeal can be taken or for which the time for noting an appeal has expired. Property, subject to the requirements of this subdivision, shall include only the property described in the order of demutualization or reorganization that is rendered by the Department of Insurance and from which no further appeal can be taken or for which the time for noting an appeal has expired.

This subdivision applies to both the underlying stock, share, or other intangible ownership interest of an owner, and any stock, share, or other intangible interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, share, or other ownership interest of dividend and nondividend paying business associations whether or not the interest is represented by a certificate.

(5) Debt of a business association, ~~other than a~~ including debt evidenced by a matured or called bearer bond or an original issue discount bond, ~~five~~ three years after the date of an interest or principal payment unclaimed by the apparent ~~owner;~~ owner.

(5a) Any dividend, profit, distribution, interest, redemption, payment on principal, cash compensation (including amounts from a demutualized insurance company), or other sum held or owing by a business association for or to its shareholder, certificate holder, policy holder, member, bondholder, or other security holder, who has not claimed it, or corresponded in writing with the business association concerning it, within three years after the date prescribed for payment or delivery.

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the ~~property;~~ property.

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation ~~accrued;~~ accrued.

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift ~~card;~~ card.

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is ~~based;~~ based.

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes ~~distributable;~~ distributable.

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution ~~date;~~ date.

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes ~~distributable;~~ distributable.

(13) Wages or other compensation for personal services, two years after the compensation becomes ~~payable;~~ payable.

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes ~~payable;~~ payable.

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax ~~penalty; and~~ penalty.

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs."

SECTION 2. This act becomes effective October 1, 2005.

HOUSE BILL 672: Reduce Holding Period for Unclaimed Property. - AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 7, 2005
Introduced by:	Rep. Holliman	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition H672-CSRU-52		Committee Co-Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 672 would reduce, from 5 to 3 years, the amount of time a holder of unclaimed stocks, other equity interests, or debt of a business association would have to wait before the holder could consider the property abandoned and turn it over to the State Treasurer's Office for deposit into the Escheats Fund. The bill allows holders to determine an owner is lost based upon the date the holder discontinues mailings to the owner. It also includes language meant to clarify what is covered by the term "stock and other equity interests" as that term currently appears in the statutes. It also adds a new, catch-all" subdivision for interest payments, cash compensation (including amounts from a demutualized insurance company), or stock redemptions and special dividends that remain unclaimed by the owner for 3 years.***

CURRENT LAW: Section 10 of Article IX of the North Carolina Constitution provides all property that escheats to the State shall be used "to aid worthy and needy students who are residents of this State and enrolled in public institutions of higher education in this State." The method, amount, and type of distribution are governed by law.

Chapter 116B of the General Statutes outlines the laws relating to abandoned and escheated property. Any person who is obligated to hold or deliver property to the owner, or is obligated to pay money to the owner is considered a "holder" under G.S. 116B-52(5). An owner is a person who has a legal or equitable interest in property or the person' legal representative. G.S. 116B-52(10). Property is considered unclaimed if the apparent owner has not communicated with the holder concerning the property and has not otherwise indicated an interest in the property. G.S. 116B-53(c) outlines how long a holder must hold the property before it is considered by law to be abandoned. G.S. 116B-5 provides that all escheated or abandoned property shall be paid into Escheat Fund in the Treasurer's Office.

Currently, the holder of stocks or other equity interests in a business association must hold the unclaimed property for five years before they become abandoned property. The term "business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit. G.S. 116B-52(2).

BILL ANALYSIS: House Bill 672 amends G.S. 116B-53(c)(4) and (c)(5) to provide that any stock or equity interest in, or debt of a business association must be held by the holder for three years, instead of five years, before it is considered abandoned.

G.S. 116B-53(c)(4) is also amended as follows:

- To allow a holder to use the date when the holder ceased making mailings to the owner as the date when the holder may determine the owner is lost.

- To clarify that the term "stock and other equity interests" includes the underlying stock, share, or other intangible ownership interest whether or not the interest is represented by a certificate.

It claries G.S. 116B-53(c)(5) to provide that unclaimed debt of a business association includes debt evidenced by a matured or called bearer bond.

It adds a new subdivision, G.S. 116B-53(c)(5a) to provide a catchall for dividends, profit, distributions, interest, payments on principal, cash compensation (including amounts from a demutualized insurance company), or other sum owing. The holder would be able to deem the owner lost if the owner does not claim the interest or correspond in writing regarding the interest for three years after the date prescribed for payment or delivery.

BACKGROUND: A mutual insurance company has no shareholders, it is owned by its policyholders. Mutual companies sometimes seek to convert to a stock form of ownership for various reasons usually because the company wishes to raise capital and enhance the financial strength of the organization. When a mutual company "demutualizes" and becomes a stock company, its surplus, or net worth is generally distributed o the policy holders in the form of stock. The distribution may also be made in the form of cash, or policy credits. A large number of mutual insurance companies "demutualized" during the period between 1999 and 2001. However, insurance companies found that a material amount of demutualization proceeds could not be delivered to policyholders, because the policyholders could not be located.

EFFECTIVE DATE: This act becomes effective October 1, 2005.

Kory Goldsmith, counsel to House Insurance Committee, substantially contributed to this summary

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 672*

Committee Substitute Favorable 5/4/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H672-CSRU-52 [v.2]

6/6/2005 5:00:15 PM

Short Title: Reduce Holding Period for Unclaimed Property.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE HOLDING PERIOD FOR CERTAIN UNCLAIMED PROPERTY HELD AS STOCK OR OTHER EQUITY INTERESTS IN A BUSINESS ASSOCIATION, INCLUDING CASH DISTRIBUTIONS OF A DEMUTUALIZED INSURANCE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-53(c) reads as rewritten:

"(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after ~~issuance;~~ issuance.

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the ~~property;~~ property.

(3) Money order, cashier's check, teller's check, and certified check, seven years after ~~issuance;~~ issuance.

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, ~~five~~ three years after the earlier of:

a. The date of a cash dividend or other ~~cash~~ distribution unclaimed by the apparent ~~owner, or~~owner.

b. The date a second consecutive mailing, notification, or communication from the holder to the apparent owner is returned to the holder as unclaimed by or undeliverable to the apparent ~~owner;~~owner.

c. The date the holder discontinued mailings, notifications, or communications to the apparent owner.

This subdivision applies to both the underlying stock, share, or other intangible ownership interest of an owner, and any stock, share, or other intangible interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, share, or other ownership interest of dividend and nondividend paying business associations whether or not the interest is represented by a certificate.

(5) Debt of a business association, ~~other than a~~ including debt evidenced by a matured or called bearer bond or an original issue discount bond, ~~five~~ three years after the date of an interest or principal payment unclaimed by the apparent ~~owner;~~ owner.

(5a) Any dividend, profit, distribution, interest, redemption, payment on principal, cash compensation (including amounts from a demutualized insurance company), or other sum held or owing by a business association for or to its shareholder, certificate holder, policy holder, member, bondholder, or other security holder, who has not claimed it, or corresponded in writing with the business association concerning it, within three years after the date prescribed for payment or delivery.

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the ~~property;~~ property.

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation ~~accrued;~~ accrued.

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift ~~card;~~ card.

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is ~~based;~~ based.

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes ~~distributable;~~ distributable.

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution ~~date;~~ date.

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes ~~distributable;~~ distributable.

(13) Wages or other compensation for personal services, two years after the compensation becomes ~~payable;~~ payable.

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes ~~payable;~~ payable.

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax ~~penalty; and~~ penalty.

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs."

SECTION 2. This act becomes effective June 30, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 672*

Committee Substitute Favorable 5/4/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H672-PCS50464-RU-52

Short Title: Reduce Holding Period for Unclaimed Property.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE HOLDING PERIOD FOR CERTAIN UNCLAIMED PROPERTY HELD AS STOCK OR OTHER EQUITY INTERESTS IN A BUSINESS ASSOCIATION, INCLUDING CASH DISTRIBUTIONS OF A DEMUTUALIZED INSURANCE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-53(c) reads as rewritten:

"(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after ~~issuance;~~ issuance.

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the ~~property;~~ property.

(3) Money order, cashier's check, teller's check, and certified check, seven years after ~~issuance;~~ issuance.

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, ~~five~~ three years after the earlier of:

a. The date of a cash dividend or other ~~cash~~ distribution unclaimed by the apparent ~~owner, or~~owner.

b. The date a second consecutive mailing, notification, or communication from the holder to the apparent owner is returned to the holder as unclaimed by or undeliverable to the apparent ~~owner;~~owner.

c. The date the holder discontinued mailings, notifications, or communications to the apparent owner.

This subdivision applies to both the underlying stock, share, or other intangible ownership interest of an owner, and any stock, share, or other intangible interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, share, or other ownership interest of dividend and nondividend paying business associations whether or not the interest is represented by a certificate.

(5) Debt of a business association, ~~other than a~~ including debt evidenced by a matured or called bearer bond or an original issue discount bond, ~~five~~ three years after the date of an interest or principal payment unclaimed by the apparent ~~owner;~~ owner.

(5a) Any dividend, profit, distribution, interest, redemption, payment on principal, cash compensation (including amounts from a demutualized insurance company), or other sum held or owing by a business association for or to its shareholder, certificate holder, policyholder, member, bondholder, or other security holder, who has not claimed it, or corresponded in writing with the business association concerning it, within three years after the date prescribed for payment or delivery.

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the ~~property;~~ property.

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation ~~accrued;~~ accrued.

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift ~~card;~~ card.

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is ~~based;~~ based.

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes ~~distributable;~~ distributable.

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution ~~date;~~ date.

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes ~~distributable;~~ distributable.

(13) Wages or other compensation for personal services, two years after the compensation becomes ~~payable;~~ payable.

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes ~~payable;~~ payable.

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax ~~penalty; and~~ penalty.

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs."

SECTION 2. This act becomes effective June 30, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 534

Short Title:	High Risk Insurance Pool.	(Public)
Sponsors:	Senators Berger of Rockingham; Allran, Bingham, Brown, Garwood, Goodall, Hartsell, Jacumin, Stevens, and Tillman.	
Referred to:	Commerce.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA HEALTH INSURANCE PLAN, BASED ON THE HEALTH PLAN FOR UNINSURABLE INDIVIDUALS MODEL ACT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, TO MEET THE NEEDS OF INDIVIDUALS WHO HAVE DIFFICULTY OBTAINING HEALTH INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 6. North Carolina Health Insurance Plan.

"**§ 58-50-160. Definitions.**

For the purposes of this Part:

(1) "Board" means the Board of Directors of the Plan.

(2) "Church plan" has the meaning given that term under section 3(33) of the Employee Retirement Income Security Act of 1974.

(3) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

a. A group health plan.

b. Health insurance coverage.

c. Part A or Part B of Title XVIII of the Social Security Act.

d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.

e. Chapter 55 of Title 10, United States Code.

f. A medical care program of the Indian Health Service or of a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under Chapter 89 of Title 5, United States Code.

i. A public health plan as defined in federal regulations.
j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).

A period of creditable coverage shall not be counted, with respect to the enrollment of an individual who seeks coverage under this Part, if, after such period and before the enrollment date, the individual experiences a significant break in coverage.

(4) "Dependent" means a resident spouse or resident unmarried child under the age of 19 years, a child who is a student under the age of 23 years and who is financially dependent upon the parent, or a child of any age who is disabled and dependent upon the parent.

(5) "Federally defined eligible individual" means an individual:
a. For whom, as of the date on which the individual seeks coverage under this Part, the aggregate of the periods of creditable coverage is 18 or more months;
b. Whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with such a plan;
c. Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (Medicare), or a State plan under Title XIX of the Act (Medicaid), or any successor program, and who does not have other health insurance coverage;
d. With respect to whom the most recent coverage within the period of aggregate creditable coverage was not terminated based on a factor relating to nonpayment of premiums or fraud;
e. Who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected this coverage; and
f. Who has exhausted continuation coverage under this provision or program, if the individual elected the continuation coverage described in sub-subdivision e. of this subdivision.

(6) "Governmental plan" has the meaning given under section 3(32) of the Employee Retirement Income Security Act of 1974 and any governmental plan established or maintained for its employees by the government of the United States or by an agency or instrumentality of the government of the United States.

(7) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care, including items and services paid for as medical care to employees or their dependents, as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(8) "Health insurance coverage" means any hospital and medical expense incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise.

(8a) "Health insurance coverage" does not include one or more, or any combination of, the following:

a. Coverage only for accident or disability income insurance, or any combination thereof.
b. Coverage issued as a supplement to liability insurance.
c. Liability insurance, including general liability insurance and automobile liability insurance.
d. Workers' compensation or similar insurance.
e. Automobile medical payment insurance.
f. Credit-only insurance.
g. Coverage for on-site medical clinics.
h. Other similar insurance coverage, specified in federal regulations issued pursuant to P.L. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(8b) "Health insurance coverage" does not include any of the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the coverage:

a. Limited-scope dental or vision benefits.
b. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.
c. Other similar, limited benefits specified in federal regulations issued under P.L. 104-191.

(8c) "Health insurance coverage" does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

a. Coverage only for a specified disease or illness.
b. Hospital indemnity or other fixed indemnity insurance.

(8d) "Health insurance coverage" does not include any of the following if offered as a separate policy, certificate, or contract of insurance:

a. Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act.

b. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services – CHAMPUS).

c. Similar supplemental coverage provided to coverage under a group health plan.

(9) "Insurer" means any entity that provides health insurance coverage in this State. For the purposes of this Part, insurer includes an insurance company, a hospital or medical service corporation, a health maintenance organization, a multiple employer welfare arrangement, or any other nongovernmental entity providing a plan of health insurance coverage or health benefits subject to State insurance regulation.

(10) "Medical care" means amounts paid for:

a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

b. Transportation primarily for and essential to medical care referred to in sub-subdivision a. of this subdivision; and

c. Insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.

(11) "Medicare" means coverage under both Parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. § 1395, et seq., as amended.

(12) "Participating insurer" means any insurer providing health insurance coverage to residents of this State.

(13) "Plan" means the North Carolina Health Insurance Plan as created in this Part.

(14) "Plan of operation" means the articles, bylaws, and operating rules and procedures adopted by the Board in accordance with this Part.

(15) "Resident" means an individual who has been legally domiciled in this State for a period of at least 30 days, except that for a federally defined eligible individual, there shall not be a 30-day requirement.

(16) "Significant break in coverage" means a period of 63 consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.

"**§ 58-50-165. Operation of the Plan.**

(a) There is hereby created a nonprofit entity to be known as the North Carolina Health Insurance Plan.

(b) The Plan shall operate subject to the supervision and control of the Board. The Board shall consist of the Commissioner of Insurance, who shall serve as an ex officio member of the Board, and 10 members appointed by the Commissioner. At least two Board members shall represent health insurance consumers, at least one Board member shall represent businesses other than the insurance industry, and at least two Board members shall be representatives of insurers, including the domestic company

selling the largest amount of health insurance in this State. A majority of the Board shall be composed of individuals who are not representatives of insurers.

(c) The initial Board members shall be appointed as follows: four of the members to serve a term of three years; three of the members to serve a term of one year; and three of the members to serve a term of two years. Subsequent Board members shall serve for terms of three years. A Board member's term shall continue until his or her successor is appointed. The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms.

(d) Vacancies on the Board shall be filled by the Commissioner. Board members may be removed by the Commissioner for cause.

(e) Board members shall not be compensated in their capacity as Board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(f) The Board shall submit to the Commissioner a plan of operation for the Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan. The plan of operation shall become effective upon approval in writing by the Commissioner consistent with the date on which the coverage under this Part must be made available. If the Board fails to submit a suitable plan of operation within 180 days after the appointment of the Board of Directors, or at any time thereafter fails to submit suitable amendments to the plan of operation, the Commissioner shall adopt temporary rules necessary or advisable to effectuate the provisions of this section. Such rules shall continue in force until modified by the Commissioner or superseded by a plan of operation submitted by the Board and approved by the Commissioner.

(g) The plan of operation shall:

(1) Establish procedures for operation of the Plan.

(2) Establish procedures for selecting a Plan administrator in accordance with G.S. 58-50-185.

(3) Establish procedures to create a fund, under the management of the Board, for administrative expenses.

(4) Establish procedures for the collection, handling, accounting, and auditing of assets, monies, and claims of the Plan and the Plan administrator.

(5) Develop and implement a program to publicize the existence of the Plan, the eligibility requirements, and procedures for enrollment, and to maintain public awareness of the Plan.

(6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the Board. The grievances shall be reported to the Board after completion of the review. The Board shall retain all written complaints regarding the Plan for at least three years.

(7) Provide for other matters as may be necessary and proper for the execution of the Board's powers, duties, and obligations under this Part.

(h) The Plan shall have the general powers and authority granted under the laws of this State to health insurers and, in addition thereto, the specific authority to do all of the following:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the Plan.

(3) Take such legal action as necessary to:

a. Avoid the payment of improper claims against the Plan or the coverage provided by or through the Plan.

b. Recover any amounts erroneously or improperly paid by the Plan.

c. Recover any amounts paid by the Plan as a result of mistake of fact or law.

d. Recover other amounts due the Plan.

(4) Establish, and modify from time to time as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the operation of the Plan. Rates and rate schedules may be adjusted for appropriate factors such as age, sex, and geographic variation in claim cost and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices.

(5) Issue policies of insurance in accordance with the requirements of this Part.

(6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the Plan, policy, and other contract design, and any other function within the Plan's authority.

(7) Borrow money to effect the purposes of the Plan. Any notes or other evidence of indebtedness of the Plan not in default are legal investments for insurers and may be carried as admitted assets.

(8) Establish rules, conditions, and procedures for reinsuring risks of participating insurers desiring to issue Plan coverages in their own name. Provision of reinsurance shall not subject the Plan to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.

(9) Employ and fix the compensation of employees.

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.
(11) Provide for reinsurance of risks incurred by the Plan.
(12) Issue additional types of health insurance policies to provide optional coverages, including Medicare supplemental insurance coverage.
(13) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, and other commonly used benefit plan design features for the purpose of making health insurance coverage offered by the Plan more cost effective.
(14) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.
(15) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Plan.

(i) The Board shall operate the Plan in a manner so that the estimated cost of providing health insurance coverage during any fiscal year will not exceed the total income the Plan expects to receive from policy premiums and funds collected through the funding mechanisms approved by the General Assembly and from other sources of revenue available to the Plan. The financing mechanisms recommended to and approved by the General Assembly shall provide for a means to adjust those mechanisms annually, or more frequently if necessary, in order to assure that the Plan has the financial capacity to insure the projected number of enrollees.

(j) The Board shall make an annual report to the Commissioner, to the Speaker of the House of Representatives, and to the President Pro Tempore of the Senate. The report shall summarize the activities of the Plan in the preceding calendar year, including the net written and earned premiums, Plan enrollment, the expense of administration, and the paid and incurred losses.

(k) Neither the Board nor its employees are liable for any obligations of the Plan. No current or former member or employee of the Board is liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under this Part, unless such act or omission constitutes willful or wanton misconduct. The Board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

"**§ 58-50-170. Adoption of rules.**

The Commissioner may adopt temporary rules to implement this Part.

"**§ 58-50-175. Eligibility for Plan coverage.**

(a) Any individual who is and continues to be a resident of this State is eligible for Plan coverage if evidence is provided of:

(1) A notice of rejection or refusal to issue substantially similar insurance for health reasons by one insurer; or

(2) A refusal by an insurer to issue insurance except at a rate exceeding the Plan rate.

(b) Any federally defined eligible individual who has not experienced a significant break in coverage and who is and continues to be a resident shall be eligible for Plan coverage.

(c) A rejection or refusal by an insurer offering only stop loss, excess of loss, or reinsurance coverage with respect to an applicant under subsection (a) of this section shall not be sufficient evidence under this subsection.

(d) The Board shall adopt a list of medical or health conditions for which a person shall be eligible for Plan coverage without applying for health insurance pursuant to subsection (a) of this section. Persons who can demonstrate the existence or history of any medical or health conditions on the list adopted by the Board shall not be required to provide the evidence specified in subsection (a) of this section. The list may be amended from time to time by the Board as the Board considers appropriate.

(e) Each resident dependent of a person who is eligible for Plan coverage shall also be eligible for Plan coverage.

(f) A person is not eligible for coverage under the Plan if:

(1) The person has or obtains health insurance coverage substantially similar to or more comprehensive than a Plan policy, or would be eligible to have coverage if the person elected to obtain it; except that:

a. A person may maintain other coverage for the period of time the person is satisfying any preexisting condition waiting period under a Plan policy; and

b. A person may maintain Plan coverage for the period of time the person is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the Plan policy.

(2) The person is determined to be eligible for enrollment in the State Medical Assistance Plan.

(3) The person has previously terminated Plan coverage unless 12 months have lapsed since the termination, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual.

(4) The Plan has paid out the lifetime maximum benefits, which is one million dollars ($1,000,000) on behalf of the person.

(5) The person is an inmate or resident of a public institution, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual.

(6) The person's premiums are paid for or reimbursed under any government sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider.

(g) Coverage under the Plan shall cease:

(1) On the date a person is no longer a resident of this State.
(2) On the date a person requests coverage to end.
(3) Upon the death of the covered person.
(4) On the date State law requires cancellation of the Plan policy.
(5) At the option of the Plan, 30 days after the Plan makes any inquiry concerning the person's eligibility or residence to which the person does not reply.

(h) Except as provided in subsection (g) of this section, a person who ceases to meet the eligibility requirements of this section may be terminated at the end of the Plan period for which the necessary premiums have been paid.

"**§ 58-50-180. Unfair referral to Plan.**

It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance producer, as defined in G.S. 58-33-10(7), or third-party administrator to refer an individual employee to the Plan or arrange for an individual employee to apply to the Plan for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment.

"**§ 58-50-185. Plan administrator.**

(a) The Board shall select a Plan administrator through a competitive bidding process to administer the Plan. The Board shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Plan administrator based on at least the following, as demonstrated in the bids submitted:

(1) Proven ability to handle health insurance coverage to individuals.
(2) Efficiency and timeliness of the Plan administrator's claim processing procedures.
(3) Estimated total charges for administering the Plan.
(4) Ability to apply effective cost containment programs and procedures and to administer the Plan in a cost-efficient manner.
(5) Financial condition and stability.

(b) The Plan administrator shall serve for a period specified in the contract between the Plan and the Plan administrator subject to removal for cause and subject to any terms, conditions, and limitations of the contract between the Plan and the Plan administrator. At least one year before the expiration of each period of service by a Plan administrator, the Board shall invite eligible entities, including the current Plan administrator, to submit bids to serve as the Plan administrator. Selection of the Plan administrator for the succeeding period shall be made at least six months before the end of the current period.

(c) The Plan administrator shall perform such functions relating to the Plan as may be assigned to it, including:

(1) Determination of eligibility.
(2) Payment of claims.
(3) Establishment of a premium billing procedure for collection of premiums from persons covered under the Plan.

(4) Other necessary functions to assure timely payment of benefits to covered persons under the Plan.

(d) The Plan administrator shall submit regular reports to the Board regarding the operation of the Plan. The contract between the Board and the Plan administrator shall specify the frequency, content, and form of the report.

(e) Following the close of each calendar year, the Plan administrator shall determine net written and earned premiums, the expense of administration, and the paid and incurred losses for the year and report this information to the Board and the Department on a form prescribed by the Commissioner.

(f) The Plan administrator shall be paid as provided in the contract between the Board and the Plan administrator.

"**§ 58-50-190. Premiums.**

(a) The Board shall establish premium rates for Plan coverage in accordance with this section. Separate schedules of premium rates based on age, sex, and geographical location may apply for individual risks. Premium rates and schedules shall not be applicable until approved by the Commissioner.

(b) The Board, with the assistance of the Commissioner, shall determine a standard risk rate by considering the premium rates charged by other insurers offering health insurance coverage to individuals. The standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for such coverage. Initial rates for Plan coverage shall not be less than one hundred twenty-five percent (125%) and not more than one hundred fifty percent (150%) of rates established as applicable for individual standard risks. Subject to the limits provided in this section, subsequent rates shall be established to provide fully for the expected costs of claims including recovery of prior losses, expenses of operation, investment income of claim reserves, and any other cost factors subject to the limitations described in this subsection. In no event shall Plan rates exceed one hundred fifty percent (150%) of rates applicable to individual standard risks.

"**§ 58-50-195. Plan benefits.**

(a) The Plan shall offer at least two types of health insurance coverage for persons eligible under G.S. 58-50-175. The covered services and benefit levels may vary between the types of coverage, but at least two types of coverage must, at a minimum, cover the benefits and services outlined in the National Association of Insurance Commissioners' Model Health Plan for Uninsurable Individuals Act and consistent with comprehensive coverage generally available to persons who are eligible for health insurance other than Medicare.

(b) Subject to approval by the Commissioner, the Board shall establish the health insurance coverage issued by the Plan, including the coverage's schedule of benefits, exclusions, and other limitation of the coverage.

"**§ 58-50-200. Preexisting conditions.**

(a) Plan coverage shall exclude charges or expenses incurred during the first 12 months following the effective date of coverage as to any condition for which medical advice, care, or treatment was recommended or received as to such conditions during the 12-month period immediately preceding the effective date of coverage, except that

no preexisting condition exclusion shall be applied to a federally defined eligible individual.

(b) Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated; provided, that:

(1) Application for Plan coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Plan shall be effective from the date on which the prior coverage was terminated; and

(2) The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Plan coverage.

"**§ 58-50-205. Nonduplication of benefits.**

(a) The Plan shall be payor of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under Plan coverage shall be reduced by all amounts paid or payable through any other health insurance coverage and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment, or liability insurance, whether provided on the basis of fault or no-fault, and by any hospital or medical benefits paid or payable under or provided pursuant to any State or federal law or program.

(b) The Plan shall have a cause of action against an eligible person for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the Plan may be reduced or refused as a setoff against any amount recoverable under this subsection.

"**§ 58-50-210. Collective action.**

The participation in the Plan as participating insurers, the establishment of rates, forms, or procedures, and any other joint or collective action required by this Part may not be the basis of any legal action or criminal or civil liability or penalty against the Plan or any participating insurer.

"**§ 58-50-215. Taxation.**

The Plan established under this Part is exempt from any and all taxes."

SECTION 2. The Board of Directors of the North Carolina Health Insurance Plan, as appointed under Section 1 of this act, shall recommend a method or methods for financing the Plan that will provide a stable funding source and allow for its continued operation. In developing its recommendation for financing, the Board shall review coverage available under health insurance high-risk pools enacted in other states, the National Association of Insurance Commissioners' Model Health Plan for Uninsurable Individuals Act, including proposed amendments to that model act, and actuarial and other information necessary for the development and financing of a fair, reasonable, and equitable comprehensive health insurance benefit plan. No later than April 1, 2006, the Board shall submit a report of its findings and recommendations to the Commissioner of Insurance and the General Assembly. The report shall include the following:

(1) The Board's recommended method or methods for financing the Plan and the rationale for the recommendation. In developing a recommendation for financing, the Board shall consider and choose one or more of the following:
   a. Premium rates, coinsurance, deductibles, lifetime coverage, and other limitations that provide for a reasonable and affordable benefit plan.
   b. Assessments of insurers and reinsurers in this State in a manner that fairly and reasonably spreads the cost of covering high-risk individuals.
   c. Service charges on admissions to hospitals and other health care facilities in a manner that fairly and reasonably spreads the cost of covering high-risk individuals.
   d. Methods of financing used in other states for high-risk pool coverage and the adequacy of those methods.

(2) Recommendations of supplementary sources of funding, such as funds obtained from public and private not-for-profit foundations, or other appropriate and available State or non-State funds.

(3) Information on all of the following:
   a. The estimated number of individuals in this State who are uninsured as of a date certain because of high-risk conditions.
   b. The estimated number of those individuals who would qualify for coverage under the Plan based on G.S. 58-50-175 and its plan of operation.
   c. The cost of coverage under each of the health insurance plans developed by the Board, including administrative costs.
   d. The effective date upon which Plan coverage can be offered based upon the recommended financing for the Plan.

SECTION 3. There is appropriated from the General Fund to the Department of Insurance the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year. These funds shall be placed in a Special Reserve for the North Carolina Health Insurance Plan in the Department of Insurance and shall be allocated for the reasonable expenses of the Board in conducting its duties under Section 2 of this act.

SECTION 4. G.S. 58-6-25(d) reads as rewritten:

"(d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State treasury, under the control of the Office of State Budget and Management. The proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Fund is subject to the provisions of the Executive Budget Act, except that no unexpended

surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used to reimburse the General Fund for the following:

(1) Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.

(2) Money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under Article 11A of Chapter 131E of the General Statutes, and in purchasing reports of patient data from statewide data processors certified under that Article.

(3) Money appropriated to the Department of Revenue to pay the expenses incurred in collecting and administering the taxes on insurance companies levied in Article 8B of Chapter 105 of the General Statutes.

(4) Money appropriated for the office of Managed Care Patient Assistance Program established under G.S. 143-730 to pay the actual costs of administering the program.

(5) Money appropriated to the Department of Insurance for the implementation and administration of independent external review procedures required by Part 4 of Article 50 of this Chapter.

(6) Money appropriated to the Department of Insurance for the Special Reserve for the North Carolina Health Insurance Plan."

SECTION 5. The North Carolina Health Insurance Plan shall not offer or provide coverage under Section 1 of this act until the effective date of an act of the General Assembly that establishes a method or methods for financing the Plan as specified in Section 2 of this act.

SECTION 6. This act is effective when it becomes law.

H 1

HOUSE BILL 859*

Short Title:	Continuing Education of Mortgage Brokers.	(Public)
Sponsors:	Representatives Brubaker, Church, and LaRoque (Primary Sponsors).	
Referred to:	Financial Institutions.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING THE CONTINUING EDUCATION OF MORTGAGE BROKERS BY ESTABLISHING REQUIREMENTS FOR LIVE BROADCASTS OF CONTINUING EDUCATION COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.07 reads as rewritten:

"**§ 53-243.07. Continuing education.**

(a) As a condition of license renewal, the Commissioner may adopt rules to require continuing education of licensees under this Article for the purpose of enhancing the professional competence and professional responsibility of all licensees. The rules may include criteria for:

(1) The content of continuing education courses.
(2) Accreditation of continuing education sponsors and programs.
(3) Accreditation of videotape or other audiovisual programs.
(4) Computation of credit.
(5) Special cases and exemptions.
(6) General compliance procedures.
(7) Sanctions for noncompliance.
(8) Conditions under which a continuing education course may be broadcast simultaneously to one or more remote locations.

(b) Annual continuing professional education requirements shall be determined by the Commissioner. However, the requirements shall not exceed eight credit hours within a one-year period.

Continuing professional education credit hours may be given only for courses that are taught live by an instructor or instructors. To receive credit hours for a course, a licensee must attend and view the live teaching of the course or a live broadcast of the course. Only the period of live instruction shall apply to the satisfaction of the continuing professional education requirement established in this section. Courses consisting solely of recorded or printed materials or of electronic images, other than live

broadcast images, shall not apply to the satisfaction of the continuing professional education requirement.

Licensees shall receive continuing professional education credit hours for live courses that are broadcast simultaneously to licensees in one or more remote locations only if the continuing education course provider, or an employee or agent of the provider, certifies to the Commissioner the identity and attendance of each licensee at the remote location. False certification of attendees by a continuing education course provider shall be grounds for the suspension or revocation of the course provider's privilege to provide courses in this State. The Commissioner may take disciplinary action against the licensee pursuant to G.S. 53-243.12 for false certification of attendance at a continuing education course.

(c) The Commissioner may require education providers of the fundamentals mortgage lending course required under the provisions of G.S. 53-243.05(b)(2) and the continuing education courses required under this section to file information regarding the contents and materials of proposed courses to satisfy the education requirements with the Commissioner for review and approval. The Commissioner may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars ($500.00) and the fee for continued review shall not exceed two hundred fifty dollars ($250.00) per annum per course offered."

SECTION 2. G.S. 53-243.12(a) reads as rewritten:

"(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing principal, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

j. Has falsely certified attendance at a continuing professional education course."

SECTION 3. This act becomes effective January 1, 2006, and applies to licenses issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1120

Short Title:	Improve Real Estate Licensing Law.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Commerce.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate ~~brokers and real estate salespersons.~~brokers.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate ~~broker or real estate salesperson,~~ broker, or directly or indirectly to engage or assume to engage in the business of real estate broker ~~or real estate salesperson~~ or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker ~~or salesperson~~ in this State."

SECTION 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4C, must be supervised by a broker-in-charge when performing any act for which a real estate license is required."

SECTION 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who ~~under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by~~

~~the foregoing definition of real estate broker.~~was formerly licensed by the Commission as a real estate salesperson before March 1, 2006."

SECTION 4. G.S. 93A-3 reads as rewritten:

"**§ 93A-3. Commission created; compensation; organization.**

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate ~~brokers or real estate salespersons.~~brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

...

(c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker ~~or salesperson~~ to negotiate any real estate transaction on behalf of another.

...."

SECTION 5. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker ~~or real estate salesperson~~ shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within three years preceding the date application is made, have satisfactorily completed, at a~~

~~school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course.~~ Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least ~~60~~ 90 hours of classroom instruction in subjects determined by the Commission, ~~which shall be in addition to the course required for a real estate salesperson license,~~ or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(a1) Each person who is issued a real estate broker license on or after March 1, 2006, shall initially be classified as a provisional broker and shall, within two years following initial licensure, satisfactorily complete, at a school approved by the commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete the postlicensing education program within the prescribed period, the broker license shall be cancelled and the Commission may, in its discretion, require the person whose license was cancelled to satisfy the postlicensing education program and the requirements for original licensure prescribed in this Chapter as a condition of license reinstatement, including the examination requirements and the license reinstatement fee prescribed by subsection (c) of this section.

(a2) An approved school shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college or university located in this State and accredited by the Southern Association of Colleges and Schools.

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker ~~or a license as real estate salesperson~~ shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. ~~A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this~~

~~subsection.~~ A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character of each applicant for licensure and require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker ~~or real estate salesperson~~ in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

...."

SECTION 6. G.S. 93A-4A reads as rewritten:

"**§ 93A-4A. Continuing education.**

(a) The Commission shall establish a program of continuing education for real estate ~~brokers and salespersons.~~brokers. An individual licensed as a real estate broker ~~or salesperson~~ is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate ~~broker or salesperson.~~broker.

(a1) ~~In addition to the requirements of subsection (a) of this section, the~~The Commission ~~may~~ may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete a special continuing education course ~~of study, not to exceed six classroom hours every three years,~~ in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers ~~and salespersons~~ while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt any reasonable rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.

(2) The curriculum of courses required.

(3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers and salespersons not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars ($125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval.

~~The Commission may also require a~~ An approved course sponsor ~~to~~ shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor. ~~The fee shall not exceed five dollars ($5.00) per licensee.~~

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars ($50.00)."

SECTION 7. Article 1 of Chapter 93A, is amended by adding the following new sections to read:

"**§ 93A-4B. Broker-in-charge qualification.**

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least one year of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience, and shall complete, within a time prescribed by the Commission, a course of study prescribed by the Commission for brokers-in-charge not to exceed 12 classroom hours of instruction. A provisional broker may not be designated as a broker-in-charge.

"**§ 93A-4C. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

(a) Effective March 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective March 1, 2006, all salesperson licenses shall

become broker licenses and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).

(b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than March 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by March 1, 2008, the provisional status of his or her broker license will be terminated and the broker will not be required to complete the 90 classroom hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by March 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90 classroom hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

(c) An approved school or sponsor shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and February 28, 2006, shall, not later than March 1, 2008, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by March 1, 2008, the broker's license shall be cancelled and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).

(e) A broker who was issued a broker license prior to March 1, 2006, shall not be required to complete either the 90 classroom hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.

(f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or after the October 1, 2005, or March 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on March 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on

March 1, 2006, the applicant's application shall be cancelled and the application fee refunded.

(g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005."

SECTION 8. G.S. 93A-5 reads as rewritten:

"**§ 93A-5. Register of applicants; roster of ~~brokers and salespersons;~~brokers; financial report to Secretary of State.**

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate ~~brokers and real estate salespersons,~~brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers ~~and real estate salespersons~~ holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission."

SECTION 9. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 10. G.S. 93A-6.1(a) reads as rewritten:

"(a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records,

documents, or other materials for ~~inspection.~~inspection or deliver the same into the custody of the Commission's authorized representatives. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court."

SECTION 11. G.S. 93A-9 reads as rewritten:

"**§ 93A-9. Licensing nonresidents.**

(a) An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers ~~and salespersons~~ from North Carolina. A license applicant who has been a resident of North Carolina for not more than 90 days may be considered by the Commission as a nonresident for the purposes of this subsection.

(b) The Commission may issue a limited broker's ~~or salesperson's~~ license to a person or an entity from another state or territory of the United States without regard to whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:

(1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.

(2) Only engages in business as a real estate broker ~~or salesperson~~ in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate ~~broker or salesperson.~~broker.

(3) Complies with the laws of this State regulating real estate brokers and ~~salespersons and~~ rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars ($300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate ~~broker or salesperson,~~broker, and the resident North Carolina real estate broker ~~or salesperson~~ shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate ~~brokers or salespersons;~~ brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers ~~or salespersons~~ and persons or entities seeking licensure under this subsection."

SECTION 12. G.S. 93A-16(a) reads as rewritten:

"(a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate ~~broker or salesperson licensed under this Chapter.~~salesperson licensed before March 1, 2006, or by any real estate broker."

SECTION 13. G.S. 93A-17 reads as rewritten:

"§ 93A-17. Grounds for payment; notice and application to Commission.

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate ~~broker or~~ salesperson licensed before March 1, 2006, or by any licensed real estate broker ~~under this Chapter~~ shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesperson acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms "licensee", "broker", and "salesperson" shall include only individual persons licensed under this Chapter as brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons prior to March 1, 2006. The terms "licensee", "broker", and "salesperson" ~~and~~ shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

SECTION 14. G.S. 93A-22 reads as rewritten:

"**§ 93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, ~~the~~ any license ~~of~~ issued to the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

SECTION 15. G.S. 93A-32(2) reads as rewritten:

"(2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, ~~corporation~~ corporation, limited liability company or association, and which conducts, for a profit or tuition charge, real estate ~~salesperson or~~ broker prelicensing or post-licensing courses prescribed by ~~G.S. 93A-4(a),~~G.S. 93A-4(a) or (a1), provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate school."

SECTION 16. G.S. 93A-34 reads as rewritten:

"§ 93A-34. **License required; application for license; fees; requirements for issuance of license.**

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license is first obtained from the Commission in accordance with the provisions of this Article and the rules and regulations promulgated by the Commission under this Article. For licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each school location and fifty dollars ($50.00) for each real estate ~~salesperson or~~ broker prelicensing or post-licensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

(1) Name and address of the applicant and the school;

(2) Names, biographical data, and qualifications of director, administrators and instructors;

(3) Description of school facilities and equipment;

(4) Description of course(s) to be offered and instructional materials to be utilized;

(5) Information on financial resources available to equip and operate the school;

(6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;

(7) Copies of bulletins, catalogues and other official publications;

(8) Copy of bond required by G.S. 93A-36;

(9) Such additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.

(2) The director, administrators and instructors are adequately qualified by reason of education and experience.

(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.

(4) The school has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.

(5) The school publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as being true and correct in content and policy by an authorized school official, and which contains the following information:

a. Identifying data and publication date;

b. Name(s) of school and its full-time officials and faculty;

c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;

d. Detailed schedule of tuition and fees;

e. Detailed course outline of all courses offered.

(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.

(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.

(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.

(9) The school's owner(s), director, administrators and instructors are of good reputation and character.

(10) The ~~school complies~~school's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding ~~safety and sanitation of facilities.~~health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.

(11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest."

SECTION 17. G.S. 93A-38(6) reads as rewritten:

"**§ 93A-38. Suspension, revocation or denial of license.**

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

...

(6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, ~~or~~ any partner

of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court."

SECTION 18. G.S. 93A-40 reads as rewritten:

"**§ 93A-40. Registration required of time share projects; real estate ~~salespersons~~ license required.**

(a) ~~From and after July 1, 1984, it~~It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first obtaining a real estate broker ~~or salesperson~~ license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

SECTION 19. G.S. 93A-41(7a) reads as rewritten:

"(7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers ~~and salespersons~~ at the time share project;".

SECTION 20. G.S. 93A-50 reads as rewritten:

"**§ 93A-50. Securities laws apply.**

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker ~~or salesperson~~ registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36."

SECTION 21. G.S. 93A-52 reads as rewritten:

"**§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.**

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed fifteen hundred dollars ($1500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed

by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's time share salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

...

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a ~~late filing~~ fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

SECTION 22. G.S. 93A-54 reads as rewritten:

"**§ 93A-54. Disciplinary action by Commission.**

(a) The Commission has power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

...

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesperson,~~salespersons, advertising or otherwise;

...

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker ~~or salesperson~~ or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

SECTION 23. G.S. 93A-58(c) reads as rewritten:

"(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all ~~persons licensed as~~ time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons ~~licensed as brokers or salespersons~~ at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter."

SECTION 24. Article 19 of Chapter 7A of General Statutes is amended by adding a new section to read:

"**§ 7A-211.2. Declaratory judgment in small claims court.**

Notwithstanding G.S. 7A-210(2), a real estate broker licensed pursuant to Chapter 93A of the General Statutes has recourse to obtain a declaratory judgment ruling in accordance with G.S. 1A-1, Rule 57, in a small claims action with respect to monies, other than a residential security deposit held pursuant to Article 6 of Chapter 42 of the General Statutes, the ownership of which are in dispute and that the real estate broker received while acting in a fiduciary capacity. Notwithstanding G.S. 7A-211, venue for an action under this section is appropriate in the county in which the property for which the disputed monies are being held is located. The defendant may be subjected to the

jurisdiction of the court over his person by the methods provided in G.S. 7A-217 or G.S. 1A-1, Rules 4(j) and 4(j1), of the Rules of Civil Procedure."

SECTION 25. This section and G.S. 93A-4C, as enacted in Section 7 of this act, are effective when this act becomes law. The remainder of the act becomes effective March 1, 2006.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 7, 2005

Name of Committee — **Date**

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Peter A. Haney	FOR LTC / MAD
Patrick O'Connor	HMW
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Tripp Melton	Sen. Stevens Office
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Senate Commerce Committee — June 7, 2005

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Matt Willoughby	NCNN
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[illegible]	[illegible]
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Roger Bone	

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Senate Commerce Committee — June 7, 2005

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John O'Hale	" "
Chad Essick	" "
Debbie Jones	NCDMV - DOT
Portia Manley	NCDOT/DMV
Will Williamson	NCDMV/DOT
Emily L Shemaker	Unclaimed Property
Shirley Fowler	State Treasurer's Office
Allen Martin	NCDST
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Senate Commerce Committee — June 7, 2005

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Ed CIANFARRA	NCBIA
Lori Bradley	NC DOI
William Whitley	NCBIA
Bucky FRYE	NCBIA
Stephanie Simpson	NC Association of REALTORS
Abby Carter Emanuelson	NMSS

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Senate Commerce Committee — June 7, 2005

Name of Committee — **Date**

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Kory Isenhour	Sen. Burger's office
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Lori Ann Harris	LAHA
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Ellis Wilkins	Town of Navassa
Melvin Walker	Town of Navassa N.C.
John Cyrus	NCSG
Esther Dixon	EC
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Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
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Jimmy Fitzgerald	NCFPC
John Rudd	"
David Knight	TNC

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Senate Commerce
Name of Committee

4/7/05
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Robert Paschal	Young, Moore
Ken Wright	BCBSNC
[illegible]	JDA
Ben Wall	me
Brian Hightsmith	NCMS
Lee Johnson	Ragsdale Liggett

Senate Commerce Committee
Tuesday, June 7, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 534	High Risk Insurance Pool.	Senator Berger
SB 1120	Improve Real Estate Licensing Law.	Senator Rand
HB 658	Code Officials Professionalism.-AB	Representative Holliman
HB 670	CDL/Federal Compliance	Representative Cole
HB 672	Reduce Holding Period for Unclaimed Property.-AB	Representative Holliman
pull → HB 859	Continuing Education of Mortgage Brokers.	Representative Brubaker Representative LaRoque Representative Church, Sr.
HB 1320	Disclose Monetary Transmissions.	Representative Hackney

Other Business

Adjournment

Senate Commerce Committee
Tuesday, June 14, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HJR 1582	Confirming Owens and Koger/Utilities Commission	Representative Saunders Representative Brubaker
HB 576	Simply Bid Process/Small Comm. Coll. Projects.	Representative England, M.D. Representative Tolson Representative Sauls
HB 676	Gov't E-Commerce/Approval of Fees.	Representative Tolson
HB 678	UNC Service Contracts	Representative Tolson
HB 786	MV Dealer Technical Corrections.-AB	Representative Cole
HB 810	Amend Certain Land Surveyor Licensure Reqs.	Representative Gibson, III Representative Gillespie
HB 1226	Inspection of Correctional Facilities.	Representative Culpepper, III

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 14, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on June 14, 2005, in Room 1027 of the Legislative Building. Eighteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized the pages: Walker Sigmon of Conover, sponsored by Senator Austin Allran; Cameron Lee of Cary sponsored by Senator Tony Rand; and Ashley Berger and Sarah McGuire of Eden, sponsored by Senator Phil Berger.

Senator Soles recognized Representative Drew Saunders to explain HJR 1582, Confirming Owens and Koger/Utilities Commission. Senator Walter Dalton moved the adoption of a committee substitute, omitting the confirmation of Mr. Owens because the Senate had already passed a resolution confirming his appointment to the Utilities Commission. The motion carried. Representative Saunders explained the committee substitute. Senator Soles drew the members' attention to the explanation of the PCS, Dr. Koger's resume, and his Statement of Economic Interest, and then introduced Mr. Franklin Freeman, who spoke in favor of the resolution on behalf of the Governor. Senator Soles asked Dr. Robert K. Koger to speak to the committee concerning his background as it relates to service on the Utilities Commission (see attached pamphlet entitled, Advanced Energy: Celebrating 25 Years of Public Benefits for North Carolina and Beyond). Senator David Hoyle moved an unfavorable report of the House Joint Resolution, but favorable as to the Senate Committee Substitute House Joint Resolution. The motion carried.

Senator Soles recognized Representative Nelson Cole to explain HB 786, MV Dealer Technical Corrections-AB. Representative Cole explained the bill. Mr. Joe Edwards, License Theft and Enforcement, DMV, answered some questions asked by the committee. Senator Rand moved a favorable report of the bill. The motion carried. Representative Cole asked that Senator Clark Jenkins handle the bill on the floor.

The next bill was HB 676, Gov't E-Commerce/Approval of Fees. In the absence of the sponsor, Representative Joe Tolson, Senator Soles recognized Walker Reagan, Counsel to the Committee, to explain the bill. Senator Harris Blake moved a favorable report of the bill. The motion carried.

In the absence of the sponsor, Representative Tolson, Senator Soles recognized Ms. Wendy Ray, Counsel of the Committee, to explain HB 678, UNC Service Contracts/AB. Mr. Mark Fleming, University of North Carolina General Administration, answered some questions posed by the members of the committee. There were some outstanding issues, so Senator Soles withdrew the bill from consideration.

Senator Soles recognized Mr. Tim Hovis, Counsel to the Committee, to explain HB 1226, Inspection of Correctional Facilities. He called on Mr. Frank Folger, Department of Insurance for additional explanation. Mr. Tim Bradley, State Fire Marshall, Department of Insurance, answered some questions, as did Mr. Bill Stovall, Engineering Director for the Department of Correction. Senator Jim Jacumin moved for a favorable report of the bill. The motion carried.

Senator Soles announced Senator Rand had requested that HB 810, Amend Certain Land Surveyor Licensure Reqs. be removed from the committee's agenda. HB 576, Simply Bid Process/Small Comm. Coll. Projects, was removed to allow more work to be done on it.

The meeting adjourned at 11:40 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 14, 2005

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

FAVORABLE

H.B.	**676**	Gov't E-Commerce/Approval of Fees.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**786**	MV Dealer Technical Corrections.-AB	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**1226**	Inspection of Correctional Facilities.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 14, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE JOINT RESOLUTION NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE JOINT RESOLUTION

H.JR.(CS #1) **1582** Confirming Owens and Koger/Utilities Commission

Draft Number:	PCS 70518
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE JOINT RESOLUTION 1582
Committee Substitute Favorable 5/11/05

Sponsors:

Referred to:

May 4, 2005

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE REAPPOINTMENT OF ROBERT V. OWENS, JR. AND THE APPOINTMENT OF DR. ROBERT K. KOGER TO THE UTILITIES COMMISSION.

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

Whereas, vacancies will occur on the North Carolina Utilities Commission on June 30, 2005, when the terms of Robert V. Owens, Jr. and Richard Conder expire; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the names of his appointees to serve for terms on the North Carolina Utilities Commission, which will begin July 1, 2005, and expire June 30, 2013; Now, therefore,

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

SECTION 1. The appointment of Robert V. Owens, Jr. to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 2. The appointment of Dr. Robert K. Koger to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 3. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE JOINT RESOLUTION 1582
Committee Substitute Favorable 5/11/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1582-CSRL-32 [v.1]

6/13/2005 11:29:39 AM

Sponsors:

Referred to:

May 4, 2005

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF DR. ROBERT K. KOGER TO THE UTILITIES COMMISSION.

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

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2005, when the term of Richard Conder expires; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Dr. Robert K. Koger, to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2005 and expire June 30, 2013; Now, therefore,

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

SECTION 1. The appointment of Dr. Robert K. Koger to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

HOUSE BILL 1582:
Utilities Comm. Appointment

BILL ANALYSIS

Committee:	Rules and Operations of the Senate	**Date:**	June 14, 2005
Introduced by:	Reps. Saunders, Brubaker	**Summary by:**	Steven Rose
Version:	PCS H1582-CSRL-32		Committee Counsel

SUMMARY: Dr. Robert K. Koger has been appointed to a term on the Utilities Commission. If confirmed by the General Assembly, Dr. Koger's term will commence July 1, 2005 and expires June 30, 2013. Dr. Koger will take the seat becoming vacant because of the expiration of the term of Commissioner Richard Conder, on June 30, 2005. HJR 1582 confirms this appointment as required by G.S. 62-10. The resolution is effective upon ratification.

Dr. Koger's biographical narrative, and his Statement of Economic Interest as filed with the North Carolina Board of Ethics, are before this Committee.

(Dr. Koger has previously served on the Utilities Commission, including service as its chair.)

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

A Utilities Commissioner is presently paid a salary of $107,136 annually (the same as a Superior Court Judge). There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years.

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

A Commissioner may not engage in any other employment, business, profession or vocation. G.S. 62-11(i) provides, in part: *"Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office."*

During the term of office a Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

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

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

concerning the services of public utilities. Again, the extent of the Commission's jurisdiction depends upon the type of utility service and is affected in some cases by federal law. The Commission also has limited authority over electric cooperatives and their subsidiaries, and municipalities.

The resolution is effective upon ratification.

H1582e2-SMRL

RESUME

ROBERT K. KOGER, PhD, P.E.
PRESIDENT
ADVANCED ENERGY

Robert (Bob) Koger assumed leadership of Advanced Energy Corporation as its President in 1988 and continues in that role today. Prior to 1988, he was with the North Carolina Utilities Commission for 21 years – first as Director of the Engineering and Economic Division and then as Chairman of the Commission. While on the staff, he held several national leadership roles. As an example, Koger was one of four individuals selected from regulatory staff personnel across the country in the 1970's, to author the first National Association of Regulatory Utilities Commissioners' (NARUC) Electricity Cost of Service Manual. Also, when NARUC and the Electric Power Research Institute (EPRI) embarked on the study of peak load (time of day) pricing in the mid 1970's, Koger was asked to chair the national task force on Rate Design.

After being appointed to Chair of the Commission in 1977, Koger continued to participate in national matters and served as a member of the executive board of NARUC and as chair of various committees and subcommittees within NARUC, as well as President of the Southeastern Association of Utility Regulators. Since leaving the Commission in 1988, Koger has maintained his involvement in the utility industry and in regional and national energy matters through service on various boards and committees. In addition, Koger returned to service as a member of the North Carolina Utilities Commission for six months in 1999, at the request of Governor Hunt.

Koger is involved directly in the energy field through his work at Advanced Energy, a non-profit corporation established by the North Carolina Utilities Commission in 1980, to help hold down increases in electricity rates and help utility customers get the most value for each kilowatt of use. Approximately sixty percent of its funding comes from a very small public benefits charge collected through North Carolina customers' electric utility bills (approximately 3 cents per month per residential customer). The remaining revenue portion results from research grants and fees for services for work done on a national and international basis.

Advanced Energy is "owned" by the Utilities Commission and reports yearly to the Commission on its work and its progress in meeting its Charter's objectives. It also has a twelve member of Board of Directors with eight members appointed by the Governor and four members representing the three major utilities and the electric cooperatives serving the State.

Even though located in North Carolina and, by mandate, primarily concerned with the well being of the State's electrical users, Advanced Energy does work with large homebuilders, industrial clients, and electric motor manufacturers on a national and sometimes international basis. The company focuses on industrial process technologies, motors and drives testing, and applied building science, with state-of-the-art laboratories in which to do testing and applied research. As one example of its uniqueness, Advanced Energy has the only independent electrical motor testing facility in the U.S. and through that facility, helped the majority of motor manufacturers from around the world meet newly implemented DOE specifications. Advanced Energy has approximately 50 well skilled and dedicated employees.

Advanced Energy also operates a renewable energy program for the State under a wholly owned non-profit subsidiary called NC GreenPower. NC GreenPower is a state wide program that promotes the utilization of renewable power (wind, solar, biomass, hydro, etc.) through voluntary participation by customers interested in ensuring a more secure energy supply as well as a cleaner environment. For example, a residential customer can sign up through its utility (or NC GreenPower directly) to purchase blocks of renewable power for $4 per month over the standard price of non-renewable power. Each block is equivalent to 100 kWhs.

PRIOR PROFESSIONAL EXPERIENCE (CHRONOLOGY):

1977-1988; Chairman and member of the North Carolina Utilities Commission (As indicated above, also served term as Commissioner in 1999).

1970-1977; Director of the Engineering and Economics Dept. for the North Carolina Utilities Commission.

1967-1970; Chief Electrical Engineer; North Carolina Utilities Commission.

1958-1967; Staff engineer and field engineer for the USDA Rural Electrification Administration (now USDA Rural Utilities Services).

EDUCATION:

Ph.D. in Industrial Engineering from North Carolina State University
Master of Economics from North Carolina State University
B.S. in Electrical Engineering from University of Tennessee
Government Executives Institute, University of North Carolina

PROFESSIONAL AFFILIATIONS:

<u>Current</u>
Board of Directors of the Southeastern Electric Reliability Council (SERC); Public Member

President and Board Member of NC GreenPower (a subsidiary of Advanced Energy)

Southern States Energy Board (SSEB) Clean Coal Committee

Member and former Chair of Association of State Energy Research and Technology Transfer Institutions (ASERTTI)
Member and former Chair, Engineering and Technology Association for NC Universities and Research Institutions (ETAG)

Former
Ad Hoc Professorships in Industrial Engineering and in College of Textiles at N.C. State University

N.C. Energy Policy Council, Chair of Committee on Research and Development, appointment by the Governor

SSEB Committee on Utility Restructuring, Chair

US Department of Energy – State Energy Advisory Board, appointment by the Secretary of Energy

President, Southeastern Association of Regulatory Utility Commissioners

Executive Committee/Board of National Association of Utility Commissioners

National Academy of Engineering Committee on Energy Storage

Advisory Council of EPRI

Duke Energy Public Advisory Committee

North Carolina Energy Development Authority

American Institute of Industrial Engineers

North Carolina Professional Engineers Association

International Association of Energy Engineers

Advisory Council of the Institute of Nuclear Power Operations

HONORS (Professional):
Named Energy Executive of the Year in 1991 by the International Association of Energy Engineers.

PERSONAL:
68 years old
Active in various Civic and Church organizations
Enjoys golf and being a "gentleman" farmer
Married to Dr. Jeanne B. Koger, 3 adult children, 3 grandchildren

Office Address:
Advanced Energy
909 Capability Drive, Suite 2100
Raleigh, NC 27606-3870
Ph. 919 857 9014
Email. bkoger@advancedenergy.org
April 22, 2005

NORTH CAROLINA BOARD OF ETHICS

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324

GEORGE F. BASON
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

April 29, 2005

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699-20301

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

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find an actual conflict of interest. We did find the potential for conflict of interest.

Mr. Koger is the President of Advanced Energy Corp ("AEC"), a private, non-profit corporation that was established by the Utilities Commission in 1980. It is actually an arm of the Commission. It reports annually to the Commission. NC GreenPower is a subsidiary of AEC. Should specific issues or matters involving AEC or NC GreenPower come before the Commission, Mr. Koger would have the potential for conflict and must exercise appropriate caution in the performance of his official duties.

The Public Utilities Act, North Carolina General Statutes §62-1 *et seq* contains other restrictions on Commission members, such as a prohibition on engaging in any other employment, business, profession, or vocation while in office. N.C.G.S. §62-10 (i). Commission members should become familiar with all such legal restrictions and requirements, which are beyond the scope of the Order.

Section 7 of the Order mandates that public officials perform their duties in a manner to promote the best interests of the public. Because conflicts of interest may arise while performing their public duties, public officials should make a due and diligent effort to determine whether they have a conflict of interest before taking any action that could have an impact on their own financial, familial, or personal interests.

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

Sincerely,

Perry Y. Newson
Executive Director

cc: Mr. Robert K. Koger
Chairman of the Commission

PHONE: 919-733-2780 FAX: 919-733-2785 E-MAIL PERRY.NEWSON@NCMAIL.NET

"Long Form"
Statement of Economic Interest

Office Use Only
Bd Code
Appt by
Date filed: 4-28-05

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail: nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009J, Raleigh

Name of Person Filing: Robert K Koger
Name of Spouse: Jeanne B Koger
Home Address: 1420 Kershaw Dr
Raleigh, NC 27609
Home Telephone: 919-787-3153
E-Mail Address: bkoger@advancedenergy.org
Name of Employer: Advanced Energy Corp.
Your Title: President & Ex. Director
Business Address: 909 Capability Dr.; Suite 2100
Raleigh, NC 27606
Business Telephone: 919-857-9014
Business Fax: 919-832-2696
Business Activity: Promotion of Energy Efficiency; industrial productivity economic growth for N.C.; and greater use of renewable through administration of the NC GreenPower Program.
Spouse's Employer and Business Activity: NC State University until May 1, 2005 (she is taking early retirement). She is a Phd Biochemist working to turn NC's biomass wastes into energy.

(i) If you are filing because you are serving on or being considered for appointment to a State "board" (as defined in the attached cover sheet), please state the full legal **name of the Board:**
North Carolina [redacted] Utilities Commission

(ii) By whom were you appointed or are you being considered for appointment (Governor, Speaker of the House, President Pro Tempore of the Senate): Governor

(iii) Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? Answering "yes" does *not* disqualify you from service. See the attached cover sheet. No ___ Yes ✓ If "yes," please explain:
Basically, Advanced Energy is an arm of the Commission. More specifically, [redacted] Advanced Energy is a private Non-profit corporation that was established by the Commission in 1980 in an effort to help "hold down" or limit increases in the price of electricity being generated & distributed in N.C. Technically, the Commissioners are the owners of the Advanced Energy Corp. The Governor is also involved in that he selects 8 of the 12 Board members for the corporation. The Commission is involved in a supportive manner in the corporation's activities. An annual public hearing is held to ensure that Advanced Energy's work with ratepayer funds is justifi

NOTE: The Order requires you to *list* assets and liabilities with a value of $10,000 or more for yourself and spouse as set forth below. You are NOT required to include an estimated *value* of the assets and liabilities. For all questions, please indicate "None" or "Not Applicable" where appropriate.

1. (a) List all parcels of **real estate** located in North Carolina in which you, or your spouse, have an ownership interest valued at $10,000 or more. Give the street address and/or other specific description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

Principal residence - 1420 Kershaw Dr.; Raleigh, NC 27609

164 acre farm - 8839 Old Switch Board Road; Snow Camp, NC

(b) Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. **Please indicate "None" or "Not Applicable" where appropriate.**

None

(c) If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain. **Please indicate "None" or "Not Applicable" if appropriate.**

None

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

None

3. List the *name* of each **publicly-owned company** in which the value of securities held by you or your spouse is $10,000 or more. This question is not asking for the value or worth of such securities – just the *name* of the company. You may attach a list from your broker. **Please indicate "None" or "Not Applicable" if appropriate.**

None

4. (a) List the *name* and business activity of each **non-publicly-owned company or business entity** in which the

value of securities or other equity interests held by you or your spouse is $10,000 or more, including, but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. **Please indicate "None" or "Not Applicable" if appropriate.**

Microcell Corporation - a start-up fuel cell company that does not expect to have a commercial product for 2 or 3 years.

(b) With respect to the entities listed above, should any of those entities own securities or equity interests of $10,000 or more in **other companies or business entities**, list the name of the company or business entity and give a brief description of the business activity of each. **Please indicate "None" or "Not Applicable" if appropriate.**

None

(c) Are any of the entities listed above licensed by, regulated by, or have any business relationships with the same area of State Government with which you are or will be associated? No ✓ Yes ___ If so, please explain.

5. You are required to make a good faith effort to identify and list any individual or business entity with which you or your spouse have a financial or professional relationship (including service on a board of directors or other leadership or policy-making body) provided a reasonable person would conclude that **either**

(1) The *nature of such relationship* presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, **or**

(2) Such individual or business entity's *other financial or professional interests* (separate and distinct from yours) would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties.

For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed. **Please indicate "None" or "Not Applicable" if appropriate.**

None

6. List all **directorships** on all boards on which you are serving. Please explain any situation that could conflict or appear to conflict with your official duties. **Please indicate "None" or "Not Applicable" if appropriate.**

~~Member~~ A "public" representative to the Southeast Electric Reliability Council. The Council meets twice a year in Atlanta to coordinate activities in the interest of ensuring electric reliability for the Southeast. I have no vote. I am there to monitor things for the Public & offer comments in that regard.

7. Are you an **elected official** at the local government level? ✓ No ___ Yes If so, please explain.

8. If you, your spouse, or your dependent children are the **beneficiary of a trust** created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of $10,000 or more. **Please indicate "None" or "Not Applicable" if appropriate.**

None

9. List each **asset** with a valuation of $10,000 or more, held by you or your spouse, **which has not been listed elsewhere.** Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects. **Please indicate "None" or "Not Applicable" if appropriate.**

Both I + my Spouse have 403b, 457, and IRA retirement plans in excess of $10,000. All are in mutual funds. None are in utility specific funds.

10. List each **liability** with a valuation of $10,000 or more for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans. **Please indicate "None" or "Not Applicable" if appropriate.**

Carolina Farm Credit - farm mortgage

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

Sources for Person Filing: Salary from Advanced Energy; Retirement income from State of NC; Social Security income; capital gain from sale of a Tennessee bank stock - Sequachee Valley Bank.

Sources for Spouse: Salary from NC State University

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

Not connected except to relationship of Advanced Energy to Commission as indicated on page 1. An examination by the Ethics Board in 1995 determined that there was no conflict of interest in this regard.

12. Are you a **practicing attorney?** No ✓ Yes ___ If so, please check each category of legal representation in which you and/or the law firm with which you are associated has, during any single year of the past five years,

earned legal fees of $10,000 or more from any of the following categories of legal representation:

( ) Admiralty ( ) Taxation ( ) Decedent's estates ( ) Corporation law ( ) Real property

( ) Negligence (representing plaintiffs) ( ) Negligence (representing defendants)

( ) Criminal law ( ) Labor law ( ) Insurance law ( ) Administrative law

( ) Utilities regulation or representation of regulated utilities ( ) Representation of local governments

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the *past five years* as an employee, officer, director, partner, or owner. For each business listed, state your association and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of business and whether you or the business is licensed by, regulated by, receive permits, grants, or other funding from the same area of State Government with which you are associated. **Please indicate "None" or "Not Applicable" if appropriate.**

Not Applicable

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

None

(b) List all **gifts** received with a value exceeding **$100** during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

None

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy. **Please indicate "None" or "Not Applicable" if appropriate.**

None

16. Having read the Order in general and the "Rules of Conduct for Public Officials" in particular, provide **any other information** which a reasonable person would conclude is necessary or helpful either to carry out the purposes of the Order or to fully disclose any potential conflict of interest or appearance of conflict. Identify any conflicts or potential conflicts you may have that are not fully or adequately covered elsewhere in this form. Include an explanation of how you would propose to resolve any conflicts or potential conflicts.

I can't foresee any conflicts but would be willing to recuse myself from any hearing before the Commission upon the possible appearance of a conflict of interest.

VERIFICATION

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

4/28/05
Date

Robert K Koger
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn to before me this the 28 day of April, 2005.

My Commission Expires: 12-7-2008

Denise T. Burton
Signature of Notary Public

Rev. 12-1-04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE JOINT RESOLUTION 1582
Committee Substitute Favorable 5/11/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1582-PCS70518-RL-32

Sponsors:

Referred to:

May 4, 2005

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF DR. ROBERT K. KOGER TO THE UTILITIES COMMISSION.

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

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2005, when the term of Richard Conder expires; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Dr. Robert K. Koger, to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2005, and expire June 30, 2013; Now, therefore,

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

SECTION 1. The appointment of Dr. Robert K. Koger to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **2**

HOUSE BILL 786*
Committee Substitute Favorable 5/5/05

Short Title: MV Dealer Technical Corrections.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MOTOR VEHICLE DEALERS LICENSING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-287(a) reads as rewritten:

"(a) License Required. – It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of ~~each~~ the dealer or wholesaler employing the sales representative. The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle dealer may sell motor vehicles at retail only at an established salesroom."

SECTION 2. G.S. 20-288(c) reads as rewritten:

"(c) **(Effective until January 1, 2006)** All licenses that are granted shall expire unless sooner revoked or suspended, on June 30 of the year following date of issue.

(c) **(Effective January 1, 2006)** All licenses that are granted shall ~~expire~~ be for a period of one year ~~from the date issued~~ unless sooner revoked or suspended. The Division shall vary the expiration dates of all licenses that are granted so that an equal number of licenses expire at the end of each month, quarter, or other period consisting of one or more months to coincide with G.S. 20-79(c)."

SECTION 3. G.S. 20-290 reads as rewritten:

"**§ 20-290. Licenses to specify places of business; display of license and list of salesmen; advertising.**

(a) The license of a motor vehicle dealer shall list each of the dealer's established salesrooms in this State. A license of a manufacturer, factory branch, distributor, distributor branch, or wholesaler shall list each of the license holder's places of business in this State. A license shall be conspicuously displayed at each place of business. In the event the location of a business changes, the Division shall endorse the change of location on the license, without charge.

(b) Each dealer shall keep a current list of his licensed salesmen, showing the ~~names, addresses, and serial numbers of their licenses,~~ name of each licensed salesman, posted in a conspicuous place in each place of business.

(c) Whenever any licensee places an advertisement in any newspaper or publication, the ~~type and serial number of license~~ licensee's name shall appear ~~therein.~~ in the advertisement."

SECTION 4. G.S. 20-291 reads as rewritten:

"**§ 20-291. Representatives to carry license and display it on request; license to name employer.**

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is ~~one-half~~ the fee set in G.S. 20-289 for an annual license."

SECTION 5. This act becomes effective January 1, 2006.

HOUSE BILL 786:
MV Dealer Technical Corrections.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 14, 2005
Introduced by:	Rep. Cole	**Summary by:**	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 786 would make technical changes to the Motor Vehicle Dealers and Manufacturers Licensing Law.***

CURRENT LAW AND BILL ANALYSIS:

Expiration of license. Under the current law, any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler must obtain a license to engage in business in North Carolina. Until January 1, 2006, licenses expire on June 30th of the year after the license is issued. After January 1, 2006, licenses will expire one year from the date of issuance.

Under House Bill 786, licenses would be issued for a period of one year, but the Division would stagger the expiration dates in the same way it staggers expiration dates for dealer license plates.

Licensee information displayed. Under the current law, a motor vehicle dealer is required to keep a list of his licensed salesmen in a conspicuous place at his business. The list must include the names, addresses, and license serial numbers of the salesmen. In addition, when a licensee advertises, the type and serial number of his license must appear in the ad.

Under House Bill 786, only the licensee's name must be posted in a business or appear in an advertisement, without additional identifying information.

License fee when changing employers. Under the current law, a sales representative, factory representative, or distributor representative license must include the name of the representative's employer. When the representative changes employers, he or she must apply for a new license with the correct employer name. The fee for the new license is half of the annual licensing fee.

Under House Bill 786, the fee for the new license with the new employer name would be the same as the annual licensing fee ($10).

EFFECTIVE DATE: The bill would be effective January 1, 2006.

H0786e2-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 676

Short Title:	Gov't E-Commerce/Approval of Fees.	(Public)
Sponsors:	Representative Tolson.	
Referred to:	State Government.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE OFFICE OF STATE BUDGET AND MANAGEMENT MUST APPROVE CERTAIN FEES RELATING TO GOVERNMENT E-COMMERCE IN CONSULTATION WITH THE STATE CHIEF INFORMATION OFFICER AND THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58.12(c) reads as rewritten:

"(c) The fee imposed under subsection (b) of this section must be approved by the ~~State Chief Information Officer,~~ Office of State Budget and Management, in consultation with the State Chief Information Officer and the Joint Legislative Commission on Governmental Operations. The revenue derived from the fee must be credited to a nonreverting agency reserve account. The funds in the account may be expended only for e-commerce initiatives and projects approved by the State Chief Information Officer, in consultation with the Joint Legislative Oversight Committee on Information Technology. For purposes of this subsection, the term "public agencies" does not include a county, unit, special district, or other political subdivision of government."

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

HOUSE BILL 676:
Gov't E-Commerce/Approval of Fees

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 14, 2005
Introduced by:	Rep. Tolson	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: House Bill 676 provides that any proposed fee to be charged by a public agency for access to services through electronic and digital transactions shall be approved by the Office of State Budget and Management (OSBM), in consultation with the State Chief Information Officer (CIO) and the Joint Legislative Commission on Governmental Operations (Gov Ops).

CURRENT LAW: Article 11A of Chapter 66 was enacted to facilitate electronic commerce with public agencies and regulate the application of electronic signatures when used in commerce with public agencies. G.S. 66-58.12(b) authorizes a public agency to charge a fee to cover its costs of permitting a person to complete a transaction electronically. The fee may be applied on a per transaction basis and may be calculated either as a flat fee or a percentage fee.

Prior to 2004, a fee charged by a State institution, board, commission, bureau, council, department, or authority had to approved by the Information Resource Management Commission (IRMC). Pursuant to S.L. 2004-129, the General Assembly abolished the IRMC and placed the responsibility for overseeing State information technology matters with the CIO. That legislation contained conforming changes that substituted the CIO wherever the IRMC previously had authority. Included in those changes was an amendment to G.S. 66-58.12(c) to conform to the rest of the legislation.

As a general rule, any request by a State agency to charge a fee is submitted to the OSBM for approval prior to being submitted to the Gov Ops.

BILL ANALYSIS: The bill would require any agency that proposes to charge a fee for transactions conducted electronically to submit the fee to the OSBM for approval. The OSBM would consult with the CIO and Gov Ops.

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

Kory Goldsmith, counsel to the House State Government Committee, substantially contributed to this summary.

H0676e1-SMRU

§ 66-58.12. Agencies may provide access to services through electronic and digital transactions; fees authorized.

(a) Public agencies are encouraged to maximize citizen and business access to their services through the use of electronic and digital transactions. A public agency may determine, through program and transaction analysis, which of its services may be made available to the public through electronic means, including the Internet. The agency shall identify any inhibitors to electronic transactions between the agency and the public, including legal, policy, financial, or privacy concerns and specific inhibitors unique to the agency or type of transaction. An agency shall not provide a transaction through the Internet that is impractical, unreasonable, or not permitted by laws pertaining to privacy or security.

(b) An agency may charge a fee to cover its costs of permitting a person to complete a transaction through the World Wide Web or other means of electronic access. The fee may be applied on a per transaction basis and may be calculated either as a flat fee or a percentage fee, as determined under an agreement between a person and a public agency. The fee may be collected by the agency or by its third party agent.

(c) The fee imposed under subsection (b) of this section must be approved by the State Chief Information Officer, in consultation with the Joint Legislative Commission on Governmental Operations. The revenue derived from the fee must be credited to a nonreverting agency reserve account. The funds in the account may be expended only for e-commerce initiatives and projects approved by the State Chief Information Officer, in consultation with the Joint Legislative Oversight Committee on Information Technology. For purposes of this subsection, the term "public agencies" does not include a county, unit, special district, or other political subdivision of government.

(d) This section does not apply to the Judicial Department. (2000-109, s. 8; 2004-129, s. 27.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 678
Committee Substitute Favorable 4/12/05

Short Title: UNC Service Contracts/AB. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN BIDS ON CERTAIN SERVICE CONTRACTS WITHOUT OBTAINING APPROVAL FROM THE STATE PURCHASING OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-53 is amended by adding the following new subsection to read:

"**§ 143-53. Rules.**

...

(d) Notwithstanding the provisions of this section or any rule adopted pursuant to this Article, The University of North Carolina may solicit bids for service contracts with a term of 10 years or less, including extensions and renewals, without the prior approval of the State Purchasing Officer."

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

HOUSE BILL 678:
UNC Service Contracts/AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 14, 2005
Introduced by:	Rep. Tolson	**Summary by:**	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 678 would allow The University of North Carolina to obtain bids on service contracts of ten years or less without obtaining approval from the State Purchasing Officer.

CURRENT LAW: Service contracts are handled by each agency and have no particular bid requirements. The agency chooses the company based on its requirements and then sends the service contract to the State Purchasing and Contract office for review. However, if the service contract is for more than three years (including extensions and renewals), the State Purchasing and Contract office must give the agency ***prior approval*** before the request for proposals is posted.

BILL ANALYSIS: House Bill 678 would provide that The University of North Carolina is not required to obtain the prior approval of the State Purchasing and Contract office before it solicits bids for services contracts of ten years or less.

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

Drupti Chauhan, counsel to the House Education Subcommittee on Universities, substantially contributed to this summary.

H0678e2-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1226

Short Title:	Inspection of Correctional Facilities.	(Public)
Sponsors:	Representatives Culpepper; Farmer-Butterfield and Parmon.	
Referred to:	State Government.	

April 14, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING INSPECTION, REVIEW, AND EXAMINATION OF PRISON FACILITIES CONSTRUCTED THROUGH LEASE-PURCHASE AGREEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 148-37.2 is amended by adding a new subsection to read:

"(k) Upon completion of the construction of a facility authorized by this section and the commencement of the State's leasehold interest pursuant to the terms of a valid lease-purchase agreement:

(1) The facility shall not be subject to county or municipal building codes and requirements and shall not be subject to inspection by any county or municipal authorities under G.S. 143-135.1.

(2) The Department of Administration may exercise all powers and perform all duties set forth in G.S. 143-341 regarding the facility.

(3) The Commissioner of Insurance shall conduct the inspections, reviews, and examinations of the facility set forth in G.S. 58-31-40 and shall conduct electrical inspections of the facility pursuant to G.S. 143-143.2."

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

HOUSE BILL 1226:
Inspection of Correctional Facilities

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 13, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1226 amends G.S. 148-37.2 to provide that prisons constructed through lease-purchase agreements are not subject to county or municipal building codes or to inspection by county or municipal authorities. The bill authorizes the Commissioner of Insurance to conduct inspections, reviews, and examinations of the facility, including electrical inspections. The Department of Administration is authorized to approve plans and specifications for the building.***

BACKGROUND: G.S. 148-37.2 authorizes the Secretary of Correction to enter into contracts with firms for the construction of correctional facilities to be operated by the Department pursuant to lease-purchase agreements of up to twenty years.

EFFECTIVE DATE: House Bill 1226 is effective when it becomes law.

H1226e1-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 576

Committee Substitute Favorable 3/28/05

Third Edition Engrossed 3/31/05

Short Title: Simply Bid Process/Small Comm. Coll. Projects. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE BID PROCESS FOR SMALL COMMUNITY COLLEGE CAPITAL IMPROVEMENT PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain projects.**

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission and Community College Capital Improvement Projects where the estimated expenditure of public money is less than one hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).

(c) A community college capital improvement project where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the State Board of Community Colleges."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 810

Short Title:	Amend Certain Land Surveyor Licensure Reqs.	(Public)
Sponsors:	Representatives Gillespie, Gibson (Primary Sponsors); and Vinson.	
Referred to:	Ways and Means.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN LICENSURE AND CERTIFICATION REQUIREMENTS UNDER THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89C-13(b) reads as rewritten:

"(b) Land Surveyor Applicant. – To be eligible for admission to examination for land surveyor intern or professional land surveyor, an applicant must be of good character and reputation and shall submit five references with the application for licensure as a land surveyor, two of which references shall be professional land surveyors having personal knowledge of the applicant's land surveying experience, or in the case of an application for certification as a land surveyor intern by three references, one of which shall be a licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which the applicant has been associated, and recommendations by references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board determines it necessary. Educational credit for institute courses, correspondence courses, or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for licensure as a professional land surveyor or for certification as a land surveyor intern respectively:

(1) As a professional land surveyor (shall meet one):

a. Rightful possession of a bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of two years or more of progressive practical experience, one year of which shall have

been under a practicing professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. ~~The applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the bachelor of science degree at the first regularly scheduled examination thereafter.~~ Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of four years of progressive practical experience, three years of which shall have been under a practicing licensed land ~~surveyor,~~surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, eight years of progressive practical experience, four years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any written and oral examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. ~~The~~ If the applicant has not successfully completed the first examination on or before January 1, 2013, the applicant may apply to the Board to take the first examination ~~(Surveying Fundamentals) immediately~~ after obtaining the associate degree and completing four years of practical experience, two years of which shall have been under a practicing professional land surveyor at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing the practical experience required under this subdivision, the applicant may apply to the Board to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully

completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

c. Repealed by Session Laws 1998-118, s. 11.

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing licensed land ~~surveyor,~~surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, 16 years of progressive practical experience, nine years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. ~~The~~ If the applicant has not successfully passed the first examination on or before January 1, 2013, the applicant may be qualified by the Board to take the first examination ~~(Surveying Fundamentals)~~ upon graduation from high school or the completion of a high school equivalency certificate and successfully completing ~~five~~ 10 years of progressive practice experience, ~~four~~ six of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. Licensure by Comity or Endorsement. – A person holding a certificate of licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, the applicant may be asked to take any examinations as the Board requires to determine the applicant's qualifications, but in any event, the applicant shall be required to pass an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the principles and practice of land surveying examination and

the fundamentals of land surveying examination. Upon satisfactorily passing the examinations, the applicant shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. – Any person presently licensed to practice professional engineering under this Chapter shall upon application be licensed to practice land surveying, providing a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. – Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1999. After July 1, 1999, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the ~~Board~~ Board, a record satisfactory to the Board of four years of progressive practical experience, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing a written and oral examination as required by the Board.

~~b. Rightful possession of a bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing any oral and written examinations required by the Board.~~

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ 10 years of progressive, practical experience, ~~four~~ six years of which shall have been under a practicing licensed land surveyor and satisfactorily passing any oral and written examinations required by the Board.

d. Graduation and examination. – A graduate of a surveying curriculum or other equivalent curriculum in surveying approved by the Board or a student who has attained senior status in an accredited surveying program of four years or more shall be admitted to the fundamentals of surveying examination. The applicant shall be notified if the examination was passed or not passed, and if passed the applicant shall be certified as a surveying intern if the applicant is otherwise qualified.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised."

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 14, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Stovall	NC Dept. of Correction
Mildred Spearman	NCDOC
Tracy Little	NCDOC
Courtney Crowder	DOI
Frank Folger	DOI
Tim Bradley	OSFM / DOI
Henry Hutaff	N.C.S.D.A.
Adrian Johnston	UNC Student Government
Heather Marcum	LOB 523 Sen Dalton's off.
Portia Manley	NCDOT/DMV
Joey Gardner	DMV License + Theft

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 14, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Simpson	NC Assn. of Realtors
Joey Peters	JP Assoc
Lu-Ann Coe	CFSA
[illegible]	CAP
Tripp Melton	Sen Stevens Office
David Humphrey	Sen. Apodaca's Office
Katherine Jarvis	Electricities
Kathleen Edwards	UNC-CH Legis. Reporting Serv.
[illegible]	NCRA-NCVA
Anne Wimsatt	[illegible]
Ed Farmer	Equality NC

Senate Commerce Committee
Tuesday, June 21, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 27	ESC Hearings Accommodate Business Activities.	Representative Carney Representative Justice Representative Gibson, III Representative Glazier
HB 576	Simply Bid Process/Small Comm. Coll. Projects.	Representative England, M.D. Representative Tolson Representative Sauls
HB 678	UNC Service Contracts	Representative Tolson
HB 1097	Design/Build/Operate Contract Sludge Mgt.	Representative Allen Representative Gibson, III
HB 1168	Prohibit Deceptive Marketing/Banking Services.	Representative Brubaker Representative Grady Representative Church, Sr.
HB 1392	Failure to Return Hired Motor Vehicles.	Representative Kiser Representative Glazier

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 21, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on June 21, 2005, in Room 1027 of the Legislative Building. Fourteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized the pages: Ashley Maltbia of Detroit, Michigan, sponsored by Senator Vernon Malone; Tom Allison of Statesville sponsored by Senator Jim Forrester; and Eborn Rawl and Julia Rawl of Greenville, sponsored by Senator Marc Basnight.

Senator Soles announced that Senate Bill 576, Simply Bid Process/Small Comm. Coll. Projects, was removed from the agenda on request of the sponsor.

Senator Soles recognized Representative Walter Church to explain HB 1168, Prohibit Deceptive Marketing/Banking Services. Senator Tony Rand moved the adoption of a committee substitute for purposes of discussion. The motion carried. Mr. Paul Stock, representing the North Carolina Bankers Association, answered questions of the members. Senator David Hoyle moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Representative Rick Glazier to explain HB 1392, Failure to Return Hired Motor Vehicles. Senator Forrester moved the adoption of a committee substitute for purposes of discussion. The motion carried. Representative Glazier explained the committee substitute. Senator Rand moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Representative Joe Tolson to explain HB 678, UNC Service Contracts/AB. Senator Richard Stevens moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Glazier to explain HB 27, ESC Hearings Accommodate Business Activities. Senator Rand moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Lucy Allen to explain HB 1097, Design/Build/Operate Contract Sludge Mgt. Senator Rand moved a favorable report of the bill. The motion carried.

The meeting adjourned at 11:30 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 21, 2005

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

FAVORABLE

H.B. **27** ESC Hearings Accommodate Business Activities.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **678** UNC Service Contracts
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1097** Design/Build/Operate Contract Sludge Mgt.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 22, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1168** Prohibit Deceptive Marketing/Banking Services.

Draft Number:	PCS 60502
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1392** Failure to Return Hired Motor Vehicles.

Draft Number:	PCS 60503
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 576

Committee Substitute Favorable 3/28/05

Third Edition Engrossed 3/31/05

Short Title: Simply Bid Process/Small Comm. Coll. Projects. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE BID PROCESS FOR SMALL COMMUNITY COLLEGE CAPITAL IMPROVEMENT PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain projects.**

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission and Community College Capital Improvement Projects where the estimated expenditure of public money is less than one hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).

(c) A community college capital improvement project where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the State Board of Community Colleges."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1168

Committee Substitute Favorable 4/27/05

Short Title: Prohibit Deceptive Marketing/Banking Services. (Public)

Sponsors:

Referred to:

April 11, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DECEPTIVE USE OF THE NAME OR LOGO OF A BANKING ENTITY WITHOUT PERMISSION IN THE MARKETING OF FINANCIAL PRODUCTS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-127 reads as rewritten:

"**§ 53-127. Unlawful use of terms indicating that business is bank or trust ~~company.~~company; unauthorized use of name of banking entity.**

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

(1) Banking. The business of receiving or soliciting money on deposit.

(2) Banking entity. A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

(1) A nonbanking entity may use any of the terms listed above in its name if the context or remaining words show clearly that the business is not a bank or trust company and is not engaged in the banking or trust business.

(2) A nonbanking entity may use any of the terms listed above where the term is the proper name of a principal or former principal in the entity and the use of the name is made in good faith and not in an effort to deceive the public.

(3) A corporation that is a bank holding company as defined in G.S. 53-226(2) or a savings and loan holding company as defined in G.S. 54B-261(d) may use the words "bank", "banker", and "trust company", and the equivalent and plural of these words in its name and may use a name similar to that of any of its subsidiary banks or stock associations.

(4) A corporation incorporated before January 1, 1905, may retain the word "trust" in its name, although it does not transact a business that requires examination by the Commissioner of Banks.

(c1) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3 misdemeanor, punishable only by a fine of up to five hundred dollars ($500.00).

(e) Any banking entity may file an action to enjoin the use of the banking entity's name or logo in connection with the sale, offering for sale, distribution, or advertising of any product or service without the express written consent of the banking entity. Any court of competent jurisdiction may grant injunctions to restrain the use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo.

(f) The provisions of this section are not exclusive remedies and do not preclude the use of any other remedy by law."

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

HOUSE BILL 1168:
Prohibit Deceptive Marketing/Banking Services

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 21, 2005
Introduced by:	Reps. Church, Brubaker, Grady	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition H1168-CSRU-61		Committee Co-Counsel

SUMMARY: The Proposed Senate Committee Substitute for House Bill 1168 would prohibit the use of the name or logo of a banking entity in the marketing of financial products and services without the express written consent of the banking entity.

CURRENT LAW: Banking entities are defined as any person, partnership, corporation, or other entity that is engaged in the banking or trust business in the State and is subject to the supervision of the Commissioner of Banks or is a banking or savings institution authorized to transact banking or trust business in the State under federal law.

No nonbanking entity can use any sign or written or printed paper indicating that it is a bank, savings bank, trust company or place of banking. No entity is allowed to use the words "bank", "savings bank", "banking", "banker" or "trust company" or the equivalent of these words in connection with any business except the business of banking or in the following situations:

- A nonbanking entity could use those terms in its name if it is clear that the business is not a bank or trust company and it is not engaged in the banking or trust business.
- A nonbanking entity could use those terms if he term is the proper name of a principal or former principal in the entity and the use of the term is in good faith and for deceptive purposes.
- A banking holding company or a savings and loan holding company may use "bank", "banker", and "trust company" and equivalent terms in its name.
- A corporation that was incorporated before January 1, 1905 may keep using the term "trust" in its name although it does not conduct any business that comes under the supervision of the Commissioner of Banks.

Violation of these provisions is a Class 3 misdemeanor, punishable only by a fine of up to $500.00.

BILL ANALYSIS: The Senate Committee Substitute for House Bill 1168 would add a credit union chartered under State or federal law to the definition of "banking entity".

The bill would prohibit any person from using the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity. A violation of this provision would be a Class 3 misdemeanor punishable by a fine of up to $500.00.

Any banking entity would be able to file an action to enjoin the use of its name or logo in the sale, offering for sale, distribution, or advertisement of any financial product or service without its express written consent. The bill provides that any court may grant injunctions to restrain the use of the name or logo and may require the defendants to pay to the banking entity all profits that resulted from the unauthorized use of the name or logo. The court may also require the defendants to pay for damages suffered by the banking entity as a result of the unauthorized use. These remedies are not to be considered exclusive and do not preclude any other remedies provided for by law.

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

Drupti Chauhan, counsel to the House Financial Institutions Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1168

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1168-CSRU-61 [v.1]

6/20/2005 6:14:44 PM

Short Title: Prohibit Deceptive Marketing/Banking Services. (Public)

Sponsors:

Referred to:

April 11, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DECEPTIVE USE OF THE NAME OR LOGO OF A BANKING ENTITY WITHOUT PERMISSION IN THE MARKETING OF FINANCIAL PRODUCTS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-127 reads as rewritten:

"**§ 53-127. Unlawful use of terms indicating that business is bank or trust ~~company.~~company; unauthorized use of name of banking entity.**

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

(1) Banking. – The business of receiving or soliciting money on deposit.

(2) Banking entity. – A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. – A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

(1) A nonbanking entity may use any of the terms listed above in its name if the context or remaining words show clearly that the business is not a bank or trust company and is not engaged in the banking or trust business.

(2) A nonbanking entity may use any of the terms listed above where the term is the proper name of a principal or former principal in the entity and the use of the name is made in good faith and not in an effort to deceive the public.

(3) A corporation that is a bank holding company as defined in G.S. 53-226(2) or a savings and loan holding company as defined in G.S. 54B-261(d) may use the words "bank", "banker", and "trust company", and the equivalent and plural of these words in its name and may use a name similar to that of any of its subsidiary banks or stock associations.

(4) A corporation incorporated before January 1, 1905, may retain the word "trust" in its name, although it does not transact a business that requires examination by the Commissioner of Banks.

(c1) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3 misdemeanor, punishable only by a fine of up to five hundred dollars ($500.00).

(e) Any banking entity may file an action to enjoin the use of the banking entity's name or logo in connection with the sale, offering for sale, distribution, or advertising of any financial product or service without the express written consent of the banking entity. Any court of competent jurisdiction may grant injunctions to restrain the use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo.

(f) The provisions of this section are not exclusive remedies and do not preclude the use of any other remedy by law."

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 1168

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1168-PCS60502-RU-61

Short Title: Prohibit Deceptive Marketing/Banking Services. (Public)

Sponsors:

Referred to:

April 11, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DECEPTIVE USE OF THE NAME OR LOGO OF A BANKING ENTITY WITHOUT PERMISSION IN THE MARKETING OF FINANCIAL PRODUCTS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-127 reads as rewritten:

"**§ 53-127. Unlawful use of terms indicating that business is bank or trust ~~company.~~company; unauthorized use of name of banking entity.**

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

(1) Banking. – The business of receiving or soliciting money on deposit.

(2) Banking entity. – A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. – A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

(1) A nonbanking entity may use any of the terms listed above in its name if the context or remaining words show clearly that the business is not a bank or trust company and is not engaged in the banking or trust business.

(2) A nonbanking entity may use any of the terms listed above where the term is the proper name of a principal or former principal in the entity and the use of the name is made in good faith and not in an effort to deceive the public.

(3) A corporation that is a bank holding company as defined in G.S. 53-226(2) or a savings and loan holding company as defined in G.S. 54B-261(d) may use the words "bank", "banker", and "trust company", and the equivalent and plural of these words in its name and may use a name similar to that of any of its subsidiary banks or stock associations.

(4) A corporation incorporated before January 1, 1905, may retain the word "trust" in its name, although it does not transact a business that requires examination by the Commissioner of Banks.

(c1) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3 misdemeanor, punishable only by a fine of up to five hundred dollars ($500.00).

(e) Any banking entity may file an action to enjoin the use of the banking entity's name or logo in connection with the sale, offering for sale, distribution, or advertising of any financial product or service without the express written consent of the banking entity. Any court of competent jurisdiction may grant injunctions to restrain the use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo.

(f) The provisions of this section are not exclusive remedies and do not preclude the use of any other remedy by law."

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 3

HOUSE BILL 1392
Committee Substitute Favorable 5/19/05
Committee Substitute #2 Favorable 6/1/05

Short Title: Failure to Return Hired Motor Vehicles. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE A CLASS 1 MISDEMEANOR OFFENSE FOR FAILURE TO RETURN A HIRED MOTOR VEHICLE VALUED IN EXCESS OF FOUR THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-167 reads as rewritten:

"**§ 14-167. Failure to return hired property.**

Any person who shall rent or hire, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who shall willfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a Class 2 misdemeanor.

If the value of the truck, automobile, or other motor vehicle that is not returned is in excess of four thousand dollars ($4,000), the person who rented or hired it and failed to return it shall be guilty of a Class 1 misdemeanor."

SECTION 2. G.S. 14-168.3 reads as rewritten:

"**§ 14-168.3. Prima facie evidence of intent to convert property.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 with respect to any property other than a truck, automobile, or other motor vehicle when one who has, by written instrument, leased or rented the personal property of another:

(1) Failed or refused to return such property to its owner after the lease, bailment, or rental agreement has expired,
   a. Within 10 days, and
   b. Within 48 hours after written demand for return thereof is personally served or given by registered mail delivered to the

last known address provided in such lease or rental agreement, or

(2) When the leasing or rental of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-168.5. Prima facie evidence of intent to convert a truck, automobile, or other motor vehicle; demand for return or payment.**

(a) Prima Facie Evidence. – It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 when one who has, by written instrument, leased or rented a truck, automobile, or other motor vehicle owned by another:

(1) Failed or refused to return the vehicle to the lessor or rentor at the place specified after the lease, bailment, or rental agreement has expired, within 72 hours after written demand for the vehicle is made in accordance with subsection (b) of this section; or

(2) When the leasing or rental of the vehicle is obtained by presentation of identification to the lessor or rentor of the vehicle which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

(b) Method of Demand; When Effective. –

(1) Demand for return of a leased or rented truck, automobile, or other motor vehicle may be made in one of three ways:

a. By personal service in accordance with Rule 4(j) of the North Carolina Rules of Civil Procedure.

b. By certified mail, return receipt requested, addressed to the last known address provided in the lease, bailment, or rental agreement.

c. By depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease, bailment, or rental agreement.

(2) Demand is effective upon hand delivery to the last known address, three days after deposit by mail (even if the demand is returned as undeliverable), or upon delivery by a designated delivery service to the last known address."

SECTION 4. G.S. 20-102 reads as rewritten:

"**§ 20-102. Report of stolen and recovered motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall ~~immediately~~ report such theft to the Division. Any said officer upon receiving information that any vehicle, which he

has previously reported as stolen, has been recovered, shall ~~immediately~~ report the fact of such recovery to the Division."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-102.2. Report of failure to return hired motor vehicles.**

Every sheriff, chief of police, or peace officer, upon receiving a vehicle theft report, warrant, or other reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167, shall report the failure to the National Crime Information Center. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall report the recovery to the National Crime Information Center. The officer shall also attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible."

SECTION 6. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 1392:
Failure to Return Hired Motor Vehicles

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 21, 2005
Introduced by:	Reps. Glazier, Kiser	**Summary by:**	Wendy Graf Ray
Version:	PCS to Third Edition H1392-CSSU-23[v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1392 would create a new Class H felony offense for failure to return a hired motor vehicle valued in excess of $4,000. It would provide that it shall be prima facie evidence of intent to commit the crime where (1) the person fails to return the vehicle at the end of the lease within 72 hours of written demand, or (2) the person obtained the motor vehicle through presentation of false identification. Upon receiving information that a hired motor vehicle has not been returned, the bill would also require law enforcement to report that information to the National Crime Information Center.***

CURRENT LAW:

Failure to return hired property. G.S. 14-167 provides that a person who rents or hires any horse, mule, or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who willfully fails to return it to the possession of the person from whom the property has been rented or hired at the expiration of the rental or lease period is guilty of a Class 2 misdemeanor. The punishment for a Class 2 misdemeanor is 1-60 days, with a possible active sentence based on the defendant's prior record.

Hiring with intent to defraud. G.S. 14-168 provides that any person who, with intent to cheat and defraud the owner of the rental price, hires or rents any horse or mule or any other like animal, or any buggy, wagon, truck, automobile or other like vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, or who shall obtain the possession of the same by false and fraudulent statements made with intent to deceive, which are calculated to deceive, and which do deceive, is guilty of a Class 2 misdemeanor.

Conversion of property. G.S. 14-168.1 provides that every person entrusted with any property as bailee, lessee, tenant or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same, or the proceeds thereof, to his own use, or secretes it with a fraudulent intent to convert it to his own use, is guilty of a Class 1 misdemeanor. The punishment for a Class 1 misdemeanor is 1-120 days, with a possible active sentence based on the defendant's prior record. If, however, the value of the property is in excess of four hundred dollars ($400.00), the person is guilty of a Class H felony. The minimum presumptive sentence for a Class H felony is 5 months and the maximum presumptive sentence is 24 months.

Prima facie evidence of intent. G.S. 14-168.3 provides that it is prima facie evidence of intent to commit a crime under any of the statutes described above when a person has leased or rented property and has either 1) failed to return the property after the rental agreement has expired within 10 days and within 48 hours after written demand, or 2) obtained the property by presenting false or fictitious identification.

BILL ANALYSIS:

Section 1 of the bill would amend G.S. 14-167 to create a new Class H felony offense for failure to return a hired or leased truck, automobile, or other motor vehicle valued in excess of $4,000. The minimum presumptive sentence for a Class H felony is 5 months and the maximum presumptive sentence is 24 months.

Section 2 of the bill would make a conforming change to G.S. 14-168.3 as the result of new language in Section 3 of the bill.

Section 3 of the bill would create a new statutory section setting forth what constitutes prima facie evidence of the intent to commit a crime under G.S. 14-167 (Failure to return hired property), G.S. 4-168 (Hiring with intent to defraud), and G.S. 14-168.1 (Conversion by bailee, lessee, tenant, or attorney-in-fact) when the property leased or rented is a truck, automobile, or other motor vehicle. Prima facie evidence would be:

- Failure or refusal to return the vehicle after the lease, bailment, or rental agreement has expired within 72 hours after written demand is made; or
- Obtaining lease of a vehicle by presentation of identification which is false, fictitious, or knowingly not current.

The written demand for return of the vehicle would have to be made by either (1) personal service in accordance with Rule 4(j) of the Rules of Civil Procedure; (2) by certified mail, return receipt requested; or (3) by deposit with a designated delivery service. The demand would be effective upon hand delivery or delivery by a designated delivery service to the last known address, or three days after deposit in the mail.

Section 4 of the bill would delete the requirement that law enforcement report thefts and recoveries of motor vehicles to the DMV "immediately."

Section 5 of the bill would require law enforcement, upon receiving a vehicle theft report or other reliable information that a hired motor vehicle has not be returned, to report the failure to return to the National Crime Information Center. Law enforcement would also be required to report the recovery of those vehicles. Finally, law enforcement would also be required to attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the number is readily accessible.

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

Trina Griffin, counsel to the House Judiciary IV Committee, substantially contributed to this summary.

H1392e3-SMSU-CSSU-23v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1392

Committee Substitute Favorable 5/19/05

Committee Substitute #2 Favorable 6/1/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1392-CSSU-23 [v.1]

6/20/2005 3:28:13 PM

Short Title: Failure to Return Hired Motor Vehicles. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE A CLASS H FELONY OFFENSE FOR FAILURE TO RETURN A HIRED MOTOR VEHICLE VALUED IN EXCESS OF FOUR THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-167 reads as rewritten:

"**§ 14-167. Failure to return hired property.**

Any person who shall rent or hire, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who shall willfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a Class 2 misdemeanor.

If the value of the truck, automobile, or other motor vehicle that is not returned is in excess of four thousand dollars ($4,000), the person who rented or hired it and failed to return it shall be guilty of a Class H felony."

SECTION 2. G.S. 14-168.3 reads as rewritten:

"**§ 14-168.3. Prima facie evidence of intent to convert property.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 with respect to any property other than a truck, automobile, or other motor vehicle when one who has, by written instrument, leased or rented the personal property of another:

(1) Failed or refused to return such property to its owner after the lease, bailment, or rental agreement has expired,

a. Within 10 days, and

b. Within 48 hours after written demand for return thereof is personally served or given by registered mail delivered to the last known address provided in such lease or rental agreement, or

(2) When the leasing or rental of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-168.5. Prima facie evidence of intent to convert a truck, automobile, or other motor vehicle; demand for return or payment.**

(a) Prima Facie Evidence. – It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 when one who has, by written instrument, leased or rented a truck, automobile, or other motor vehicle owned by another:

(1) Failed or refused to return the vehicle to the lessor or rentor at the place specified after the lease, bailment, or rental agreement has expired, within 72 hours after written demand for the vehicle is made in accordance with subsection (b) of this section; or

(2) When the leasing or rental of the vehicle is obtained by presentation of identification to the lessor or rentor of the vehicle which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

(b) Method of Demand; When Effective. –

(1) Demand for return of a leased or rented truck, automobile, or other motor vehicle may be made in one of three ways:

a. By personal service in accordance with Rule 4(j) of the North Carolina Rules of Civil Procedure.

b. By certified mail, return receipt requested, addressed to the last known address provided in the lease, bailment, or rental agreement.

c. By depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease, bailment, or rental agreement.

(2) Demand is effective upon hand delivery to the last known address, three days after deposit by mail (even if the demand is returned as undeliverable), or upon delivery by a designated delivery service to the last known address."

SECTION 4. G.S. 20-102 reads as rewritten:

"**§ 20-102. Report of stolen and recovered motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall ~~immediately~~ report such theft

to the Division. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall ~~immediately~~ report the fact of such recovery to the Division."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-102.2. Report of failure to return hired motor vehicles.**

Every sheriff, chief of police, or peace officer, upon receiving a vehicle theft report, warrant, or other reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167, shall report the failure to the National Crime Information Center. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall report the recovery to the National Crime Information Center. The officer shall also attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible."

SECTION 6. 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 1392

Committee Substitute Favorable 5/19/05

Committee Substitute #2 Favorable 6/1/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1392-PCS60503-SU-23

Short Title: Failure to Return Hired Motor Vehicles. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE A CLASS H FELONY OFFENSE FOR FAILURE TO RETURN A HIRED MOTOR VEHICLE VALUED IN EXCESS OF FOUR THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-167 reads as rewritten:

"**§ 14-167. Failure to return hired property.**

Any person who shall rent or hire, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who shall willfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a Class 2 misdemeanor.

If the value of the truck, automobile, or other motor vehicle that is not returned is in excess of four thousand dollars ($4,000), the person who rented or hired it and failed to return it shall be guilty of a Class H felony."

SECTION 2. G.S. 14-168.3 reads as rewritten:

"**§ 14-168.3. Prima facie evidence of intent to convert property.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 with respect to any property other than a truck, automobile, or other motor vehicle when one who has, by written instrument, leased or rented the personal property of another:

(1) Failed or refused to return such property to its owner after the lease, bailment, or rental agreement has expired,

a. Within 10 days, and

b. Within 48 hours after written demand for return thereof is personally served or given by registered mail delivered to the last known address provided in such lease or rental agreement, or

(2) When the leasing or rental of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-168.5. Prima facie evidence of intent to convert a truck, automobile, or other motor vehicle; demand for return or payment.**

(a) Prima Facie Evidence. – It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 when one who has, by written instrument, leased or rented a truck, automobile, or other motor vehicle owned by another:

(1) Failed or refused to return the vehicle to the lessor or rentor at the place specified after the lease, bailment, or rental agreement has expired, within 72 hours after written demand for the vehicle is made in accordance with subsection (b) of this section; or

(2) When the leasing or rental of the vehicle is obtained by presentation of identification to the lessor or rentor of the vehicle which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

(b) Method of Demand; When Effective. –

(1) Demand for return of a leased or rented truck, automobile, or other motor vehicle may be made in one of three ways:

a. By personal service in accordance with Rule 4(j) of the North Carolina Rules of Civil Procedure.

b. By certified mail, return receipt requested, addressed to the last known address provided in the lease, bailment, or rental agreement.

c. By depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease, bailment, or rental agreement.

(2) Demand is effective upon hand delivery to the last known address, three days after deposit by mail (even if the demand is returned as undeliverable), or upon delivery by a designated delivery service to the last known address."

SECTION 4. G.S. 20-102 reads as rewritten:

"**§ 20-102. Report of stolen and recovered motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall ~~immediately~~ report such theft

to the Division. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall ~~immediately~~ report the fact of such recovery to the Division."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-102.2. Report of failure to return hired motor vehicles.**

Every sheriff, chief of police, or peace officer, upon receiving a vehicle theft report, warrant, or other reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167, shall report the failure to the National Crime Information Center. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall report the recovery to the National Crime Information Center. The officer shall also attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible."

SECTION 6. 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 2

HOUSE BILL 678

Committee Substitute Favorable 4/12/05

Short Title: UNC Service Contracts/AB. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN BIDS ON CERTAIN SERVICE CONTRACTS WITHOUT OBTAINING APPROVAL FROM THE STATE PURCHASING OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-53 is amended by adding the following new subsection to read:

"**§ 143-53. Rules.**

...

(d) Notwithstanding the provisions of this section or any rule adopted pursuant to this Article, The University of North Carolina may solicit bids for service contracts with a term of 10 years or less, including extensions and renewals, without the prior approval of the State Purchasing Officer."

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

HOUSE BILL 678:
UNC Service Contracts/AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 21, 2005
Introduced by:	Rep. Tolson	**Summary by:**	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 678 would allow The University of North Carolina to obtain bids on service contracts of ten years or less without obtaining approval from the State Purchasing Officer.

CURRENT LAW: Service contracts are handled by each agency and have no particular bid requirements. The agency chooses the company based on its requirements and then sends the service contract to the State Purchasing and Contract office for review. However, if the service contract is for more than three years (including extensions and renewals), the State Purchasing and Contract office must give the agency ***prior approval*** before the request for proposals is posted.

BILL ANALYSIS: House Bill 678 would provide that The University of North Carolina is not required to obtain the prior approval of the State Purchasing and Contract office before it solicits bids for services contracts of ten years or less.

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

Drupti Chauhan, counsel to the House Education Subcommittee on Universities, substantially contributed to this summary.

H0678e2-SMSU

HOUSE BILL 27:
ESC Hearings Accommodate Business Activities

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 21, 2005
Introduced by:	Reps. Glazier, Gibson, Justice, Carney	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Bill 27 adds a requirement that the Employment Security Commission consider the ordinary business activities of employers when scheduling hearings for appeals from adjudicated determinations in unemployment benefit claims cases.***

CURRENT LAW: Under current law, when certain issues are raised in connection with an unemployment benefits claim, such as the claimant's last bona fide employment or eligibility, adjudication is required to determine the issue. Adjudication is an informal investigation in which the adjudicator contacts the relevant parties to obtain information on the specific issue. After the conclusion of an investigative procedure, a determination is issued. A party aggrieved by the adjudicator's determination may file a written appeal.

The appeal is heard by an Appeals Referee who has broad authority over the scheduling and conduct of the hearing. Under current regulations, the Appeals Referee is required to schedule a hearing as soon as possible after receipt of the appeal and file from the adjudicator. The law also authorizes the Appeals Referee to schedule telephone hearings when the local office is at least 40 miles from the employer's business, or upon agreement or request of the parties, or to meet standards for appeals promptness or efficient administration of the Employment Security Law. In addition, the Appeals Referee has authority to grant a continuance if a party, necessary witness, or legal representative has a prior commitment that conflicts with the hearing date or time and which cannot reasonably be rescheduled.

BILL ANALYSIS: This bill would add a requirement that appeals "be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant."

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

Karen Cochrane-Brown, counsel to the House Commerce Committee, substantially contributed to this summary.

H0027e1-SMRU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 27

Short Title:	ESC Hearings Accommodate Business Activities.	(Public)
Sponsors:	Representatives Glazier, Gibson, Justice, Carney (Primary Sponsors); Alexander, Brown, Daughtridge, Farmer-Butterfield, Goforth, Harrison, LaRoque, McGee, Pate, Preston, Stiller, and Underhill.	
Referred to:	Commerce.	

February 2, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING THE EMPLOYMENT SECURITY COMMISSION TO CONSIDER THE ORDINARY BUSINESS ACTIVITIES OF EMPLOYERS WHEN SCHEDULING HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-15(c) reads as rewritten:

"(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable regulations established by the Commission. ~~Such~~ The regulations need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Commission prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Commission by regulation shall provide. The hearing shall be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant. The appeals referee may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the Commission unless within 10 days after the date of notification or mailing of the decision, whichever is earlier a written appeal is filed pursuant to such regulations as the Commission may adopt. No person may be appointed as an appeals referee unless he or

she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Commission as a hearing officer under G.S. 96-4(m). No appeals referee in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals referee; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the appeals referee, the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the Commission may dismiss the appeal."

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

HOUSE BILL 1097:
Design/Build/Operate Contract Sludge Mgt

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 21, 2005
Introduced by:	Reps. Gibson, L. Allen	**Summary by:**	O. Walker Reagan
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1097 authorizes local governments to enter into contracts that provide for the design, construction, and operation of sludge management facilities by a single entity and to award contracts for the management of sludge on the basis of factors other than cost alone.***

CURRENT LAW: G.S. 143-129.2 authorizes local governments to enter into contracts for the design, construction, and operation (design/build/operate, or DBO) of solid waste management facilities. Ancillary facilities such as roads, water and sewer lines, transfer stations, and other facilities must still be procured through normal competitive bidding procedures.

BILL ANALYSIS: House Bill 1097 extends the provisions of G.S. 143-129.2 to allow local governments to enter into design/build/operate contracts for sludge management facilities. A sludge management facility is defined as a facility to process sludge that has been generated by a municipal wastewater treatment plant for final end use or disposal. It does not include facilities that are part of the wastewater treatment process that generates the sludge. The bill also makes clarifying and conforming changes.

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

BACKGROUND: In general, contracts entered into or awarded by the State, local governments, and or other public bodies require that the bids be prepared to allow for separate and independent bidding for each subdivision of work, including design stages (architectural and engineering), building stages (heating, ventilating, and air conditioning; plumbing; electrical; and general contracting), and in some cases the operation of the facility. The contracts are normally awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and time specified in the bids for performance of the contract. The advantages of traditional contracting are that it seeks to identify the lowest cost provision of services for government projects, promote accountability, and bring legitimacy to governmental decisions. In certain contracting situations, the General Assembly has authorized exemptions from the competitive bidding requirements, including emergency situations, change order work, guaranteed energy savings contracts, construction management at risk, Previously bid or "piggybacking" contracts, use of unit's own permanent work force (force account work), and purchases of goods and services from nonprofit work centers for the blind and severely disabled.[1] The General Assembly has also authorized the limited issuance of design-build contracts for the Board of Transportation, certain local school construction projects, and other specific public construction projects (airports, convention centers, etc.).

Under the design, build, and operate approach, a single contract is awarded for the design, construction, *and operation* of a capital improvement. Advantages to the design/build/operate approach are that it seeks to create a single point of responsibility for design, construction, and operation; expedite project completion by facilitating the overlap of the design and construction phases of the project; and promote cost efficiencies through economies of scale, timesavings, and innovative design.

Tim Dodge, Legislative Analyst to the House Environment and Natural Resources Committee, substantially contributed to this summary.

H1097e2-SMRU

[1] Bluestein, Frayda. *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments.* School of Government, UNC Chapel Hill (2004).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1097*

Committee Substitute Favorable 5/4/05

Short Title: Design/Build/Operate Contract Sludge Mgt. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO AWARD CONTRACTS FOR THE MANAGEMENT OF SLUDGE ON THE BASIS OF FACTORS OTHER THAN COST ALONE AND TO ENTER INTO CONTRACTS THAT PROVIDE FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF SLUDGE MANAGEMENT FACILITIES BY A SINGLE ENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129.2 reads as rewritten:

"**§ 143-129.2. Construction, design, and operation of solid waste management ~~facilities.~~and sludge management facilities.**

(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. ~~130A-290.~~130A-290, except that the term 'unit of local government' includes a sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes and an authority created under Article 1 of Chapter 162A of the General Statutes. As used in this section, the term 'sludge management facility' means a facility that processes sludge that has been generated by a municipal wastewater treatment plant for final end use or disposal but does not include any component of a wastewater treatment process or facility that generates sludge.

(b) To acknowledge the highly complex and innovative nature of solid waste and sludge management ~~technology~~ technologies for processing mixed solid ~~waste,~~ waste and sludge generated by water and wastewater treatment facilities, the relatively limited availability of existing and proven proprietary technology involving solid waste and sludge management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste and sludge management which include in their scope combinations of design, construction, operation, management and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including but not limited to facility design, operational experience, system reliability, energy

production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article ~~8, or any other general, special~~ or any local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall ~~include:~~include all of the following:

(1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed ~~contract;~~contract.

(2) A proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of ~~such~~ the proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of ~~such proposal;~~the proposal.

(3) ~~Such~~ Any other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to ~~such~~ a request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon ~~such~~ any other factors and information ~~as~~ that the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a

contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, ~~such~~ the determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article ~~8, or any other general,~~ or any local ~~or special~~ law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

(1) A contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain ~~such~~ a solid waste or sludge management ~~facility, upon such terms and conditions for such consideration and for such term or~~ facility upon such terms and conditions, for such consideration, and for such duration, not to exceed 40 years, as may be agreed upon by the unit of local government and ~~such person;~~the person.

(2) Payment by the unit of local government of a fee or other charge to ~~such~~ the person for acceptance, processing, recycling, management and disposal of solid ~~waste;~~waste or sludge.

(3) An obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste or sludge management facility guaranteed quantities of solid ~~wastes; and~~wastes or sludge.

(4) The sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste or sludge management facility.

(f) The construction work for any facility or structure ~~which~~ that is ancillary to ~~the~~ a solid waste or sludge management facility and ~~which~~ that does not involve storage and processing of solid waste or sludge or the separation, ~~extraction~~ extraction, and recovery of useful or marketable forms of energy and materials from solid waste at ~~the~~ a solid waste management ~~facility,~~ facility shall be procured through competitive bidding procedures described by G.S. 143-128 through 143-129.1. ~~Such ancillary~~ Ancillary facilities ~~shall~~ include but ~~shall~~ are not ~~necessarily be~~ limited to ~~the following:~~ roads, water and sewer lines to the facility limits, transfer stations, scale ~~house,~~ houses, administration ~~buildings~~ buildings, and residue and bypass disposal sites."

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ron Ottavio	Wachovia
Jane Bolin	Wachovia
Paul Stock	NCBA
Mark Sillman	UNC-CN
Martha Pendergrass	UNC@CH
Mark Flynn	University
Angie Harris	Margin Taylor
Jennings Gofourth	Enterprise Rent-a-Car
Kathryn Sawyer	AZEC/NC
Alissa Dolan	NC Conservation Network
Stephanie Dorko	Charlotte Chamber

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McKay	Gov office
Matt Gerrald	NCFPC
Susannah Gerrald	NCFPC
Tim Hesler	NCFPC
Betty Turner	Bank of America
BRUCE THOMPSON	PARKER POE
David Crawford	AIA NC
Tripp Melton	Sen. Stevens Office
Kathleen Edwards	UNC-CH Legis. Reporting Service
Amanda Stokes	Holt York McDaniel + High
Colleen Kochanek	" "

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Reeson	Capitol Group
Terry Sandlin	State Watch
Lisa Martin	NC Home Builders
Katherine Davis	Electric Cities of NC
Lucas Scott Barbour	NC-ESC
David Reed	ESC
Amy Fullwood	Hunton & Williams

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kaye Gattis	NC State Ports Authority
O'Neill D'Cruz	Doctor of the Day
R. Paul Wilms	NCMBA
Lee Hodge	KCLH
Kevin G. Leonard	WCSR
Tom Sri	NFIB
Heron Hulon	N.C.S.D.A.
Kathy Hawkins	Progress Energy
Ron Buzzard	NCCBI
Elizabeth Dalton	NCCBI
[illegible]	J.D., M.P.A.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Johnson	Republic Mgmt
Mike Quin	NC AFLCIO
Anne Barkema	NCDOC
M. Austin	GSK
John McAllister	Duke Energy

Senate Commerce Committee
Tuesday, June 28, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 255	Finance Law Changes 1.	Senator Kerr
SB 881	Insurance Points for Lapse in Auto Coverage.	Senator Garrou
HB 654	Confidential Insurance Mkt./Financial Doc.-AB	Representative Holliman
HB 655	Better Insurance/Annuity Disclosure.-AB	Representative Holliman
HB 660	Insurance Financial Changes.-AB	Representative Holliman
HB 733	License Insurance Statistical Organizations.-AB	Representative Holliman
HB 734	Improve Managed Care Statutes.-AB	Representative Holliman Representative Wright
HB 737	Improve Health Insurance Underwriting.-AB	Representative Holliman Representative Wright

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 28, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on June 28, 2005, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized the pages: Lily Schorr and Sarah Cline of Charlotte, sponsored by Senator Daniel Clodfelter; Stefan Mazzora of Cary and Amelia Gardner of Raleigh sponsored by Senator Richard Stevens; Erin Yarborough of Raleigh, sponsored by Senator Vernon Malone, Britney McConnell of Catawba, sponsored by Senator Austin Allran, and Sharmir and Milton Thomas of Southern Pines, sponsored by Senator Harris Blake.

Senator Soles announced that Senate Bill 255, Finance Law Changes 1, was removed from the agenda on request of the sponsor, and that HB 734, Improve Managed Care Statutes.-AB, and HB 737, Improve Health Insurance Underwriting-AB, were also removed from the agenda.

Senator Soles recognized Senator Linda Garrou to explain SB 881, Insurance Points for Lapse in Auto Coverage. Senator Garrou moved the adoption of a committee substitute for purposes of discussion. The motion carried. Mr. Joe Stewart, representing the Insurance Federation of North Carolina; Mr. Frank Folger, representing the Department of Insurance; and Mr. Glenn Jernigan, representing GMAC and Insurance Agents of North Carolina, all spoke in support of the bill. Senator Jim Jacumin moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill with a recommended referral to the Finance Committee. The motion carried.

Senator Soles recognized Mr. Folger, Department of Insurance, to explain HB 654, Confidential Insurance Mkt./Financial Doc.-AB, on behalf of Representative Hugh Holliman who was unable to attend the meeting. Senator Tom Apodaca moved adoption of an amendment. The motion carried. Senator William Purcell moved a favorable report of the bill as amended, with the amendment engrossed into a committee substitute. The motion carried.

Senator Soles again recognized Mr. Folger, Department of Insurance, to explain HB 655, Better Insurance/Annuity Disclosure.-AB, on behalf of Representative Hugh Holliman. Senator Malone moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Apodaca moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles once more recognized Mr. Folger, Department of Insurance, to explain HB 660, Insurance Financial Changes.-AB, on behalf of Representative Hugh Holliman. Senator Presnell moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Apodaca moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Frank Folger, Department of Insurance, to explain HB 733, License Insurance Statistical Organizations.-AB, on behalf of Representative Hugh Holliman. Senator

Phil Berger moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Phil Berger moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

The meeting adjourned at 11:35 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 29, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **881** Insurance Points for Lapse in Auto Coverage.

Draft Number:	PCS 75342
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **654** Confidential Insurance Mkt./Financial Doc.-AB

Draft Number:	PCS 70525
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **655** Better Insurance/Annuity Disclosure.-AB

Draft Number:	PCS 10373
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **660** Insurance Financial Changes.-AB

Draft Number:	PCS 10372
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **733** License Insurance Statistical Organizations.-AB

Draft Number:	PCS 70524
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 5

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 255

Short Title:	Finance Law Changes 1.	(Public)
Sponsors:	Senator Kerr.	
Referred to:	Rules and Operations of the Senate.	

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO STATE AND LOCAL FINANCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. This act amends State and local finance laws.

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

HOUSE BILL 734*
Committee Substitute Favorable 5/2/05

Short Title: Improve Managed Care Statutes.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE UNIFORM CREDENTIALING STATUTE AN UNNECESSARY PROVISION; ENSURE THAT COVERED PERSONS RECEIVING EXTERNAL REVIEW KNOW WHAT INFORMATION THEIR INSURER PROVIDES TO THE EXTERNAL REVIEW ORGANIZATION PERFORMING THE REVIEW; AND ELIMINATE EXTERNAL REVIEW OUTSIDE OF NORMAL BUSINESS HOURS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-230(a) reads as rewritten:

"**§ 58-3-230. Uniform provider credentialing.**

(a) An insurer that provides a health benefit plan and that credentials providers for its networks shall maintain a process to assess and verify the qualifications of a licensed health care ~~practitioner, or applicant for licensure as a health care practitioner,~~ provider within 60 days of receipt of a completed provider credentialing application form approved by the Commissioner. When a health care practitioner joins a practice that is under contract with an insurer to participate in a health benefit plan, the effective date of the health care practitioner's participation in the health benefit plan network shall be the date the insurer approves the practitioner's credentialing application."

SECTION 2.(a) G.S. 58-50-80(b)(4) reads as rewritten:

"**§ 58-50-80. Standard external review.**

...

(b) Upon receipt of a request for an external review under subsection (a) of this section, the Commissioner shall, within 10 business days, complete all of the following:

...

(4) Notify the insurer in writing whether the request for external review has been accepted. If the request has been accepted, the notice shall direct the insurer or its designee utilization review organization to provide to the assigned ~~organization,~~organization and to the covered person or authorized representative who made the request for external

review on behalf of the covered person, within seven days of receipt of the notice, the documents and any information considered in making the noncertification appeal decision or the second-level grievance review decision."

SECTION 2.(b) G.S. 58-50-82(c) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(c) As soon as possible, but within the same day of receiving notice under subdivision (b)(2) of this section that the request has been assigned to a review organization, the insurer or its designee utilization review organization shall provide or transmit all documents and information considered in making the noncertification appeal decision or the second-level grievance review decision to the assigned review organization electronically or by telephone or facsimile or any other available expeditious method. A copy of the same information shall be sent by the same means or other expeditious means to the covered person or the covered person's representative who made the request for expedited external review."

SECTION 3. The first sentence of G.S. 58-50-82(b) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:".

SECTION 4. G.S. 58-50-82(e) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(e) As expeditiously as the covered person's medical condition or circumstances require, but not more than four business days after the date of receipt of the request for an expedited external review, the assigned organization shall make a decision to uphold or reverse the noncertification, noncertification appeal decision, or second-level grievance review decision and notify the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner of the decision. In reaching a decision, the assigned organization is not bound by any decisions or conclusions reached during the insurer's utilization review process or internal grievance process under G.S. 58-50-61 and G.S. 58-50-62."

SECTION 5. This act becomes effective October 1, 2005, and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 737*
Committee Substitute Favorable 4/20/05

Short Title: Improve Health Insurance Underwriting.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED, LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS FOR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO FIVE; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; AND AMEND THE UTILIZATION REVIEW LAWS TO CLARIFY THAT SUCH LAWS PLAINLY APPLY TO INDIVIDUAL INSURANCE COVERAGE AS WELL AS GROUP COVERAGE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsection to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including physical and mental illnesses).

(3) Claims experience.

(4) Duration from issue.

(5) Receipt of health care.

(6) Medical history.

(7) Genetic information."

SECTION 2.(a) G.S. 58-65-60 is amended by adding the following new subsection to read:

"**§ 58-65-60. Subscribers' contracts; required and prohibited provisions.**

...

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(b) G.S. 58-67-85 is amended by adding the following new subsection to read:

"**§ 58-67-85. Master group contracts, filing requirement; required and prohibited provisions.**

...

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(c) G.S. 58-51-80(c) reads as rewritten:

"**§ 58-51-80. Group accident and health insurance defined.**

...

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. With the exception of disability income insurance, employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 3. G.S. 58-51-30(b) reads as rewritten:

"**§ 58-51-30. Policies to cover newborn infants, foster children, and adopted children.**

...

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

SECTION 4.(a) G.S. 58-51-15(a)(2) reads as rewritten:

"**§ 58-51-15. Accident and health policy provisions.**

(a) Required Provisions. – Except as provided in subsection (c) of this section each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this subsection in the substance of the words that appear in this section. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

...

(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy provision may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars ($5,000) or more for any one sickness or injury; disability income policies affording benefits of one hundred dollars ($100.00) or more per month for not less than 12 months; and

franchise policies. Other policies to which this section applies must delete the words "except fraudulent misstatements."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of G.S. 58-51-15(b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE."

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 4.(b) G.S. 58-51-15(h) reads as rewritten:

"**§ 58-51-15. Accident and health policy provisions.**

...

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2) b. of this section does not apply ~~to:~~to policies issued to eligible individuals under G.S. 58-68-60.

~~(1) Policies issued to eligible individuals under G.S. 58-68-60.~~

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

SECTION 5. G.S. 58-50-150(b) reads as rewritten:

"**§ 58-50-150. North Carolina Small Employer Health Reinsurance Pool.**

...

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take~~

~~place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ five members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Four of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

SECTION 6. G.S. 58-54-45(a) reads as rewritten:

"**§ 58-54-45. By reason of disability.**

(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

SECTION 7. G.S. 58-3-100(c) reads as rewritten:

"**§ 58-3-100. Insurance company licensing provisions.**

...

(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of a life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and

every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

SECTION 8. G.S. 58-50-61(a) is amended by adding the following new subdivision to read:

"**§ 58-50-61. Utilization review.**

(a) Definitions. – As used in this section, in G.S. 58-50-62, and in Part 4 of this Article, the term:

...

(2a) 'Certificate of coverage' includes a policy of insurance issued to an individual person or a franchise policy issued pursuant to G.S. 58-51-90.

...."

SECTION 9. Sections 1 through 4 of this act become effective January 1, 2006, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S

SENATE BILL 881

Short Title:	Insurance Points for Lapse in Auto Coverage.	(Public)
Sponsors:	Senators Garrou; and Goodall.	
Referred to:	Commerce.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE COMMISSIONER OF INSURANCE AND THE NORTH CAROLINA RATE BUREAU TO ADOPT RULES TO ASSIGN INSURANCE POINTS FOR LAPSES IN MOTOR VEHICLE LIABILITY POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. The Commissioner of Insurance and the North Carolina Rate Bureau shall adopt rules to assign insurance points when a motor vehicle liability policy required by Article 9A of Chapter 20 of the General Statutes, Motor Vehicle Safety and Financial Responsibility Act of 1953, lapses more than once in a 36-month period. The minimum number of points to be assigned shall be one point for the second lapse of coverage and two points for the third and any subsequent lapses during the 36-month period.

Rules shall be adopted pursuant to this section by January 1, 2006.

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

SENATE BILL 881: Lapse in Liability Insurance

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 28, 2005
Introduced by:	Sen. Garrou	**Summary by:**	Wendy Graf Ray
Version:	PCS to First Edition S881-CSMAf-14		Committee Counsel

SUMMARY: The PCS for Senate Bill 881 would revise the penalties for individuals operating motor vehicles when their liability insurance policies have lapsed.

CURRENT LAW: All vehicles intended to be operated on North Carolina highways must be registered with the DMV, and all registered vehicles are required to carry continuous liability insurance coverage. The purpose of this law is to provide protection to persons who may be injured or damaged by the negligent operation of a motor vehicle. Without financial responsibility, an owner loses the privilege to drive on North Carolina roads and must therefore surrender his registration plate and card.

G.S. 20-309 requires an insurer to notify DMV when it terminates a liability insurance policy and a lapse in coverage results (failure to do so is punishable by a civil penalty of $200 to be assessed by the Commissioner of Insurance). Upon receiving this notice, the DMV notifies the owner of the vehicle of the lapse, and the owner must respond within 10 days certifying to the DMV either:

- That the owner had financial responsibility effective on or before termination; or
- In case of a lapse, that the owner now has financial responsibility, the owner did not operate the vehicle during the lapse knowing that there was a lapse, and the vehicle was not involved in an accident during the lapse. The owner must also pay a $50 civil penalty for the lapse.

If the owner fails to certify that he has financial responsibility as described above, then the DMV is required to revoke the vehicle's registration for 30 days. The owner is required to surrender the registration plate and card to DMV upon revocation, and failure to do so is a Class 1 misdemeanor. After the 30 days, the owner may reregister the vehicle upon payment of a restoration fee of $50 and the appropriate fee for a new registration plate.

BILL ANALYSIS: The PCS for Senate Bill 881 would reorganize and reword G.S. 20-309(e) and G.S. 20-311 to clarify the process by which the DMV notifies and takes action against an owner of a motor vehicle who allows his or her liability insurance policy to lapse.

The bill would change the penalties for not maintaining financial responsibility by creating an increasing scale of monetary penalties based on the number of lapses an owner has had in the previous 3 years. For the first lapse, the penalty would be $75, a second would be $150, and a third or subsequent lapse would be $250 (currently $50, regardless of number of lapses).

The bill would also make failure to surrender a registration plate and card to DMV after it has been revoked a Class 2 misdemeanor (currently Class 1 misdemeanor). The restoration fee to reregister the vehicle after a revocation would be $25 (currently $50). Any applicable civil penalty would also have to be paid before a vehicle could be reregistered.

EFFECTIVE DATE: The bill would be effective January 1, 2006, and would apply to lapses occurring on or after that date.

S0881e1-SMSU-CSMAf-14

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 881
PROPOSED COMMITTEE SUBSTITUTE S881-CSMAf-14 [v.8]

6/27/2005 4:41:55 PM

Short Title: Lapse in Liability Insurance. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE PENALTIES FOR OPERATING A MOTOR VEHICLE WITHOUT HAVING IN FULL FORCE AND EFFECT A LIABILITY INSURANCE POLICY PROVIDING FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-309(e) reads as rewritten:

"(e) ~~Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the~~ An insurer that, by cancellation or failure to renew, terminates a liability insurance policy ~~shall~~ must notify the Division of the termination within 20 business ~~days;~~ days. ~~provided, no cancellation notice is required if the same insurer issues a replacement insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy,~~ This requirement does not apply when an insurer reinstates an existing policy or issues a new liability insurance policy to replace the terminated policy and no lapse in coverage ~~results,~~ results. ~~and the insurer sends the~~ The insurer must send a certificate of insurance form for the new policy to the Division. The insurer ~~shall~~ must notify the Division of any new policy for insurance within 20 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any ~~insurance company~~insurer with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other ~~insurance companies~~insurers may submit the notices required under this section by either paper or electronic means. The names of insureds and the beginning date and termination date of insurance coverage provided to the Division by the insurer pursuant to this ~~paragraph shall~~ subsection ~~constitute~~ constitutes a designated trade secret under G.S. 132-1.2. The Commissioner of Insurance may assess a civil penalty of two hundred dollars ($200.00) against an insurer that fails to notify the Division as required by this subsection, unless the insurer establishes good cause for the failure.

~~The Division, upon receiving notice of a lapse in insurance coverage, shall notify the owner of the lapse in coverage, and the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:~~

~~(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or~~

~~(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle crash during the period of no financial responsibility.~~

~~Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.~~

~~In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division.~~"

SECTION 2. G.S. 20-311 reads as rewritten:

"**§ 20-311. ~~Revocation of registration when financial responsibility not in effect.~~Action by the Division when notified of a lapse in financial responsibility.**

~~Upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, the Division shall revoke the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle in the year registration has changed for 30 days.~~

~~The vehicle for which registration has been revoked pursuant to this section may be registered at the end of the 30-day revocation period upon certification of financial responsibility and payment by the vehicle owner of a fifty-dollar ($50.00) administrative fee in addition to appropriate license fees. In no event may such vehicle be registered prior to payment of the fifty dollar ($50.00) administrative fee.~~

(a) Action. – When the Division receives evidence, by a notice of termination of a liability insurance policy or otherwise, that the owner of a motor vehicle registered or required to be registered in this State does not have financial responsibility for the operation of the vehicle, the Division must send the owner a letter. The letter must notify the owner of the evidence and inform the owner that the owner must respond to the letter within 10 days of the date on the letter and explain how the owner has met the duty to have continuous financial responsibility for the vehicle. Based on the owner's response, the Division must take the appropriate action listed:

(1) Division Correction. – If the owner responds within the required time and the response establishes that the owner has not had a lapse in financial responsibility, the Division must correct its records.

(2) Penalty Only. – If the owner responds within the required time and the response establishes all of the following, the Division must assess the owner a penalty in the amount set in subsection (b) of this section:

a. The owner had a lapse in financial responsibility, but the owner now has financial responsibility.

b. The vehicle was not involved in an accident during the lapse in financial responsibility.

c. The owner did not operate the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle.

(3) Penalty and Revocation. – If the owner responds within the required time and the response establishes any of the following, the Division must assess the owner a penalty in the amount set in subsection (b) of this section and revoke the registration of the owner's vehicle for the period set in subsection (c) of this section:

a. The owner had a lapse in financial responsibility and still does not have financial responsibility.

b. The owner now has financial responsibility even though the owner had a lapse, but the vehicle was involved in an accident during the lapse, the owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle, or both.

(4) Revocation Pending Response. – If the owner does not respond within the required time, the Division must revoke the registration of the owner's vehicle for the period set in subsection (c) of this section. When the owner responds, the Division must take the appropriate action listed in subdivisions (1) through (3) of this subsection as if the response had been timely.

(b) Penalty Amount. – The following table determines the amount of a penalty payable under this section by an owner who has had a lapse in financial responsibility; the amount is based on the number of times the owner has been assessed a penalty under this section during the three year period before the date the owner's current lapse began:

Number of Lapses in Previous 3 Years	Penalty Amount
None	$75.00
One	$150.00
Two or More	$250.00

(c) Revocation Period. – The revocation period for a revocation based on a response that establishes that a vehicle owner does not have financial responsibility is indefinite and ends when the owner obtains financial responsibility or transfers the vehicle to an owner who has financial responsibility. The revocation period for a revocation based on a response that establishes the occurrence of an accident during a lapse in financial responsibility or the knowing operation of a vehicle without financial responsibility is 30 days. The revocation period for a revocation based on failure of a vehicle owner to respond is indefinite and ends when the owner responds.

(d) Revocation Notice. – When the Division revokes the registration of an owner's vehicle, it must notify the owner of the revocation. The notice must inform the owner of the following:

(1) That the owner must return the vehicle's registration plate and registration card to the Division, if the owner has not done so already, and that failure to do so is a Class 2 misdemeanor under G.S. 20-45.

(2) That the vehicle's registration plate and registration card are subject to seizure by a law enforcement officer.

(3) That the registration of the vehicle cannot be renewed while the registration is revoked.

(4) That the owner must pay any penalties assessed, a restoration fee, and the fee for a registration plate when the owner applies to the Division to register a vehicle whose registration was revoked.

(e) Registration After Revocation. – A vehicle whose registration has been revoked may not be registered during the revocation period in the name of the owner, a child of the owner, the owner's spouse, or a child of the owner's spouse. This restriction does not apply to a spouse who is living separate and apart from the owner. At the end of a revocation period, a vehicle owner who has financial responsibility may apply to register a vehicle whose registration was revoked. The owner must pay any penalty assessed, a restoration fee of twenty-five dollars ($25.00), and the fee for a registration plate."

SECTION 3. G.S. 20-316 reads as rewritten:

"**§ 20-316. Divisional hearings upon lapse of liability insurance coverage.**

Any person whose registration plate has been revoked under G.S. ~~20-309(e) or~~ 20-311 may request a hearing. Upon receipt of such request, the Division ~~shall,~~must, as early as practical, afford ~~him~~ an opportunity for hearing. ~~Upon such~~ At the hearing the

duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and documents. If it appears that continuous financial responsibility existed for the vehicle involved, or if it appears the lapse of financial responsibility is not reasonably attributable to the neglect or fault of the person whose registration plate was revoked, the Division ~~shall~~ must withdraw its order of revocation and such person may retain the registration plate. Otherwise, the order of revocation shall be affirmed and the registration plate surrendered."

SECTION 4. G.S. 20-312 is repealed.

SECTION 5. G.S. 20- 316.1 is repealed.

SECTION 6. This act becomes effective January 1, 2006, and applies to lapses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 881
PROPOSED COMMITTEE SUBSTITUTE S881-PCS75342-MAf-14

Short Title: Lapse in Liability Insurance. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE PENALTIES FOR OPERATING A MOTOR VEHICLE WITHOUT HAVING IN FULL FORCE AND EFFECT A LIABILITY INSURANCE POLICY PROVIDING FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-309(e) reads as rewritten:

"(e) ~~Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the~~ An insurer that, by cancellation or failure to renew, terminates a liability insurance policy ~~shall~~ must notify the Division of the termination within 20 business ~~days;~~ days. ~~provided, no cancellation notice is required if the same insurer issues a replacement insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy,~~ This requirement does not apply when an insurer reinstates an existing policy or issues a new liability insurance policy to replace the terminated policy, and no lapse in coverage ~~results,~~ results. ~~and the insurer sends the~~ The insurer must send a certificate of insurance form for the new policy to the Division. The insurer ~~shall~~ must notify the Division of any new policy for insurance within 20 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any ~~insurance company~~insurer with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other ~~insurance companies~~insurers may submit the notices required under this section by either paper or electronic means. The names of insureds and the beginning date and termination date of insurance coverage provided to the Division by the insurer pursuant to this ~~paragraph shall~~ subsection ~~constitute~~ constitutes a designated trade secret under G.S. 132-1.2. The Commissioner of Insurance may assess a civil penalty of two hundred dollars ($200.00) against an insurer that fails to notify the Division as required by this subsection, unless the insurer establishes good cause for the failure.

~~The Division, upon receiving notice of a lapse in insurance coverage, shall notify the owner of the lapse in coverage, and the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:~~

~~(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or~~

~~(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle crash during the period of no financial responsibility.~~

~~Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.~~

~~In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division.~~"

SECTION 2. G.S. 20-311 reads as rewritten:

"**§ 20-311. ~~Revocation of registration when financial responsibility not in effect.~~Action by the Division when notified of a lapse in financial responsibility.**

~~Upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, the Division shall revoke the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle in the year registration has changed for 30 days.~~

~~The vehicle for which registration has been revoked pursuant to this section may be registered at the end of the 30-day revocation period upon certification of financial responsibility and payment by the vehicle owner of a fifty-dollar ($50.00) administrative fee in addition to appropriate license fees. In no event may such vehicle be registered prior to payment of the fifty dollar ($50.00) administrative fee.~~

(a) Action. – When the Division receives evidence, by a notice of termination of a liability insurance policy or otherwise, that the owner of a motor vehicle registered or required to be registered in this State does not have financial responsibility for the operation of the vehicle, the Division must send the owner a letter. The letter must notify the owner of the evidence and inform the owner that the owner must respond to the letter within 10 days of the date on the letter and explain how the owner has met the duty to have continuous financial responsibility for the vehicle. Based on the owner's response, the Division must take the appropriate action listed:

(1) Division correction. – If the owner responds within the required time and the response establishes that the owner has not had a lapse in financial responsibility, the Division must correct its records.

(2) Penalty only. – If the owner responds within the required time and the response establishes all of the following, the Division must assess the owner a penalty in the amount set in subsection (b) of this section:

a. The owner had a lapse in financial responsibility, but the owner now has financial responsibility.

b. The vehicle was not involved in an accident during the lapse in financial responsibility.

c. The owner did not operate the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle.

(3) Penalty and revocation. – If the owner responds within the required time and the response establishes any of the following, the Division must assess the owner a penalty in the amount set in subsection (b) of this section and revoke the registration of the owner's vehicle for the period set in subsection (c) of this section:

a. The owner had a lapse in financial responsibility and still does not have financial responsibility.

b. The owner now has financial responsibility even though the owner had a lapse, but the vehicle was involved in an accident during the lapse, the owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle, or both.

(4) Revocation pending response. – If the owner does not respond within the required time, the Division must revoke the registration of the owner's vehicle for the period set in subsection (c) of this section. When the owner responds, the Division must take the appropriate action listed in subdivisions (1) through (3) of this subsection as if the response had been timely.

(b) Penalty Amount. – The following table determines the amount of a penalty payable under this section by an owner who has had a lapse in financial responsibility; the amount is based on the number of times the owner has been assessed a penalty under this section during the three-year period before the date the owner's current lapse began:

Number of Lapses in Previous Three Years	Penalty Amount
None	$75.00
One	$150.00
Two or More	$250.00

(c) Revocation Period. – The revocation period for a revocation based on a response that establishes that a vehicle owner does not have financial responsibility is indefinite and ends when the owner obtains financial responsibility or transfers the vehicle to an owner who has financial responsibility. The revocation period for a revocation based on a response that establishes the occurrence of an accident during a lapse in financial responsibility or the knowing operation of a vehicle without financial responsibility is 30 days. The revocation period for a revocation based on failure of a vehicle owner to respond is indefinite and ends when the owner responds.

(d) Revocation Notice. – When the Division revokes the registration of an owner's vehicle, it must notify the owner of the revocation. The notice must inform the owner of the following:

(1) That the owner must return the vehicle's registration plate and registration card to the Division, if the owner has not done so already, and that failure to do so is a Class 2 misdemeanor under G.S. 20-45.

(2) That the vehicle's registration plate and registration card are subject to seizure by a law enforcement officer.

(3) That the registration of the vehicle cannot be renewed while the registration is revoked.

(4) That the owner must pay any penalties assessed, a restoration fee, and the fee for a registration plate when the owner applies to the Division to register a vehicle whose registration was revoked.

(e) Registration After Revocation. – A vehicle whose registration has been revoked may not be registered during the revocation period in the name of the owner, a child of the owner, the owner's spouse, or a child of the owner's spouse. This restriction does not apply to a spouse who is living separate and apart from the owner. At the end of a revocation period, a vehicle owner who has financial responsibility may apply to register a vehicle whose registration was revoked. The owner must pay any penalty assessed, a restoration fee of twenty-five dollars ($25.00), and the fee for a registration plate."

SECTION 3. G.S. 20-316 reads as rewritten:

"§ 20-316. Divisional hearings upon lapse of liability insurance coverage.

Any person whose registration plate has been revoked under G.S. ~~20-309(e) or~~ 20-311 may request a hearing. Upon receipt of such request, the Division ~~shall,~~must, as early as practical, afford ~~him~~ an opportunity for hearing. ~~Upon such~~ At the hearing the

duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and documents. If it appears that continuous financial responsibility existed for the vehicle involved, or if it appears the lapse of financial responsibility is not reasonably attributable to the neglect or fault of the person whose registration plate was revoked, the Division ~~shall~~ must withdraw its order of revocation and such person may retain the registration plate. Otherwise, the order of revocation shall be affirmed and the registration plate surrendered."

SECTION 4. G.S. 20-312 is repealed.

SECTION 5. G.S. 20-316.1 is repealed.

SECTION 6. This act becomes effective January 1, 2006, and applies to lapses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 654

Committee Substitute Favorable 4/21/05

Short Title: Confidential Insurance Mkt./Financial Doc.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE CONFIDENTIAL TREATMENT OF INSURANCE MARKET CONDUCT ANALYSIS AND FINANCIAL ANALYSIS FILES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-2-240. Market conduct analysis, financial analysis, and related information not public record.**

(a) Notwithstanding Chapter 132 of the General Statutes, all market analysis, documents arising from market conduct action, and financial analysis documents, ratios, programs, findings, and other information in the custody of the Department are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence.

(b) As used in this Article:

(1) 'Market analysis' means a process whereby individuals employed or contracted by the Commissioner collect and analyze information from filed schedules, surveys, required reports other than periodic reports specifically required by statute, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.

(2) 'Market conduct action' means any of the full range of activities, other than an examination that the Commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis. Additional market conduct actions, including those taken subsequent to market analysis as a result of the findings of or

indications from market analysis include: correspondence with insurer; insurer interviews, information gathering; policy and procedure reviews; interrogatories; and review of insurer self-evaluation and compliance programs, including membership in a best-practice organization. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this section."

SECTION 2. G.S. 58-2-132(f) reads as rewritten:

"(f) All working papers, information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in connection with an ~~examination~~ examination, market analysis, market conduct action, or financial analysis shall be given confidential treatment, are not subject to subpoena, and shall not be made public by the Commissioner or any other person. The Commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties."

SECTION 3. This act becomes effective October 1, 2005.

HOUSE BILL 654:
Confidential Insurance Mkt./Financial Doc.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 27, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Tim Hovis
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 654 would make all market conduct analysis and financial analysis documents in the custody of the Department of Insurance confidential and not subject to subpoena unless a court determines that in the interests of justice the documents should be discoverable or admissible in evidence.***

The act would become effective October 1, 2005.

[As introduced, this bill was identical to S727, as introduced by Sen. Berger of Rockingham, which is currently in Senate Commerce.]

CURRENT LAW: G.S. 132-1(b) provides that public records and public information complied by State and local agencies are the property of the people and that it is the policy of the State that these records shall be available to the public. A "public record" is defined very broadly to include just about any document in any form that is created or generated by a public agency. Chapter 132 provides that certain limited documents and information is not considered a public record.

In addition to those documents that are not considered public records, the statutes contain numerous provisions that designate other documents as "confidential". Confidential usually means information held by one party about another party and which the first party may not release without the other party's consent. A confidential document would be subject to discovery unless covered by a privilege such as attorney-client or doctor-patient, or unless specifically excluded by law. There are a number of provisions like this in Chapter 58. They include:

- G.S. 58-2-128 providing that the Commissioner may share information with the Board of Governors of the Federal Reserve System regarding persons that control both a depository institution and engage in insurance activities.
- G.S. 58-2-132(f) providing that papers and information obtained through an examination or financial analysis are confidential and not subject to subpoena.
- G.S. 58-2-230 allows the Commissioner to provide the Commissioner of Labor information regarding every employer that is self-i9nsured for worker's compensation, and that information is confidential and not subject to public inspection under G.S. 132-6.
- G.S. 58-12-35 provides that risk-based capital reports, to the extent the information is not otherwise available in annual statements, are confidential and not subject to subpoena.

BILL ANALYSIS: **Section 1** creates a new statute, G.S. 58-2-240 that provides market conduct analysis and financial analysis documents, ratios, programs, findings, or other information and copies in the custody of the Department of Insurance in connection with a market conduct analysis or financial analysis will be confidential and are not discoverable in a civil action unless a court finds that in the interest of justice the documents should be discoverable.

Section 2 amends G.S. 58-2-132(f) so that the confidentiality provisions of the financial examination provisions would apply to market conduct analysis.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 654

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H654-ARG-7 [v.2]

Date JUNE 28 ,2005

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

Senator _____

moves to amend the bill on page 1, line 16,
by rewriting the line to read:
"admissible in evidence or except as provided in G.S. 58-2-128 and 58-2-132 (g) through (j). The Commissioner, however, may use these documents, materials, findings or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 654

Committee Substitute Favorable 4/21/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H654-PCS70525-RG-30

Short Title: Confidential Insurance Mkt./Financial Doc.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE CONFIDENTIAL TREATMENT OF INSURANCE MARKET CONDUCT ANALYSIS AND FINANCIAL ANALYSIS FILES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-2-240. Market conduct analysis, financial analysis, and related information not public record.**

(a) Notwithstanding Chapter 132 of the General Statutes, all market analysis, documents arising from market conduct action, and financial analysis documents, ratios, programs, findings, and other information in the custody of the Department are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence or except as provided in G.S. 58-2-128 and G.S. 58-2-132(g) through (j). The Commissioner, however, may use these documents, materials, findings, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(b) As used in this Article:

(1) 'Market analysis' means a process whereby individuals employed or contracted by the Commissioner collect and analyze information from filed schedules, surveys, required reports other than periodic reports specifically required by statute, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.

(2) 'Market conduct action' means any of the full range of activities, other than an examination that the Commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis. Additional market conduct actions, including those taken subsequent to market analysis as a result of the findings of or indications from market analysis include: correspondence with insurer; insurer interviews, information gathering; policy and procedure reviews; interrogatories; and review of insurer self-evaluation and compliance programs, including membership in a best-practice organization. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this section."

SECTION 2. G.S. 58-2-132(f) reads as rewritten:

"(f) All working papers, information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in connection with an ~~examination~~ examination, market analysis, market conduct action, or financial analysis shall be given confidential treatment, are not subject to subpoena, and shall not be made public by the Commissioner or any other person. The Commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties."

SECTION 3. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 655

Committee Substitute Favorable 4/25/05

Short Title: Better Insurance/Annuity Disclosure.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; AND REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT.

The General Assembly of North Carolina enacts:

PART I. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 1.1. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~Standards of Disclosure for Annuities and Life Insurance."

SECTION 1.2. Article 60 of Chapter 58 of the General Statutes is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 1.3. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~ Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 1.4. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual and group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 1.5. G.S. 58-60-10 reads as rewritten:

"**§ 58-60-10. Definitions.**

Unless the context of use indicates a different meaning, for the purposes of this ~~Article,~~ Part, the following definitions shall apply:

...."

SECTION 1.6. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes

a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 1.7. G.S. 58-60-20(a) reads as rewritten:

"(a) Each insurer subject to this ~~Article~~ Part shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to this ~~Article.~~Part. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use."

SECTION 1.8. G.S. 58-60-20(i) reads as rewritten:

"(i) For the purposes of this ~~Article,~~Part, the annual premium for a basic policy or rider, for which the insurer reserves the right to change the premium, shall be the maximum annual premium."

SECTION 1.9. G.S. 58-60-25 reads as rewritten:

"**§ 58-60-25. Adoption of Buyer's Guide; requirements.**

Any insurer soliciting life insurance in this State on or after December 1, 1979, shall adopt and use a Buyer's Guide, and the adoption and use by an insurer of the Buyer's Guide promulgated by the National Association of Insurance Commissioners in the NAIC Model Life Insurance Solicitation Regulations shall be in compliance with the requirements of this ~~Article.~~Part."

SECTION 1.10. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 2. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change.

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) An insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

At the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"§ 58-60-65. Evidence of payment.

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum, the receipt shall clearly show:
   a. The name of the payor.
   b. The name of the insured under each policy covered by the premium.
   c. The amount paid.
   d. The date paid.
   e. The date-paid-to status of the policy.
   f. The policy number.
   g. The face amount and type of policy for which the payment will be credited.
   h. The signature of the agent.
   i. The agent's printed name and unique identification number.
   j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"§ 58-60-70. Proof of policy delivery.

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"§ 58-60-75. Company duties.

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms required under this Part shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 1.11. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-90. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-95. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-100. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-105. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 1.12. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-120. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-125. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund any of the following:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA).

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer.

c. A governmental or church plan defined in section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code.

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

e. Structured settlement annuities.

f. Charitable gift annuities.

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan

participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-130. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-140.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered

guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) of the Internal Revenue Code but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-135. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-140 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed

applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free-look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free-look period shall run concurrently with any other free-look period provided under State law or regulation.

"**§ 58-60-140. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-145. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract

owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end dates of the current report period.

(2) The accumulation and cash-surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART II. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 2. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage or that coverage will be purchased. The notice shall be provided to the employee in connection with the application for coverage or within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART III. GROUP ANNUITY CONTRACTS

SECTION 3. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which ~~such~~ the contract is issued, ~~as herein provided,~~ is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity

contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of ~~such~~ the contract either wholly from the employer's funds or funds contributed by ~~him,~~ the employer, or partly from ~~such~~ the funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART IV. EXPLANATION OF HEADINGS AND EFFECTIVE DATE

SECTION 4. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 5. This act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date.

HOUSE BILL 655:
Better Insurance/Annuity Disclosure.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 27, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: See the attached summary prepared by Frank Folger, Legislative Counsel, Department of Insurance.

The Proposed Committee Substitute makes changes to small face disclosure requirements as recommended by the National Association of Insurance Commissioners.

[As introduced, this bill was identical to S979, as introduced by Sen. Malone, which is currently in Senate Commerce.]

HOUSE BILL 655
BETTER INSURANCE/ANNUITY DISCLOSURE

PART I. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

Sections 1. through 1.11. Adopts the new NAIC model act/regulation on Annuity, Home Service Life Insurance and Small Face Amount Life Insurance Disclosure and updates our current life insurance disclosure provisions in Article 60 of Chapter 58 to reflect the current NAIC Life Insurance Disclosure model act. This Part reorganizes Article 60 to create a life insurance and annuity product disclosure article, with separate parts for each different product disclosure requirement. Each model specifically addresses disclosure requirements to assist the consumer when making a purchasing decision by requiring notice of the feature, including potentially negative aspects of each product. For example: (1) sellers of small face life insurance (insurance with a face amount less than $15,000) would have to disclose up front that premiums paid-in could exceed the face value of the policy, if that is a possibility at any time; (2) sellers of life insurance through the home service distribution system must disclose whether the policyholder is allowed to change the method of premium payment, whether the policyholder can combine multiple policies from the same company or its affiliates or subsidiaries into one policy and what the impact, if any, such a consolidation would have regarding underwriting, waiting periods, contestable periods and the like, and they would have to provide and maintain evidence of payment of premiums; and (3) sellers of annuities would have to provide to the applicant for an annuity a copy of the NAIC Model Guide to Fixed Deferred Annuities and a disclosure document, containing information on the insurer, specifics of the contract including its long-term nature, the specific amount of charges applicable to the contract, and information on the variability of guaranteed rates and the current guaranteed rate.

Part II. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

Section 2. Amends G.S. 58-58-75 to require employers that purchase life insurance policies on the lives of their employees for the benefit of the employer to disclose to its employees that it has purchased or will purchase coverage on that employee and that disclosure must occur in connection with the application for coverage or within 30 days after the effective date of the coverage and, if applicable, that these employer-owned life insurance (sometimes referred to as COLI for "corporate-owned life insurance") policies can be maintained after the employment has terminated.

PART III. GROUP ANNUITY CONTRACTS

Section 3. Amends G.S. 58-58-145 requires group annuity insurers to issue certificates of coverage to each annuitant via the policyholder on a form approved by the Commissioner.

PART IV. EXPLANATION OF HEADINGS, SEVERABILITY AND EFFECTIVE DATES

Sections 4. and 5. Contain a proviso on the naming of headings for parts and makes the act effective January 1, 2006.

H0655e2-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 655

Committee Substitute Favorable 4/25/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H655-CSRG-29 [v.2]

6/27/2005 4:59:04 PM

Short Title: Better Insurance/Annuity Disclosure.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; AND REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT.

The General Assembly of North Carolina enacts:

PART I. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 1.1. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~Standards of Disclosure for Annuities and Life Insurance."

SECTION 1.2. Article 60 of Chapter 58 of the General Statutes is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 1.3. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~ Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is

under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 1.4. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual and group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 1.5. G.S. 58-60-10 reads as rewritten:

"**§ 58-60-10. Definitions.**

Unless the context of use indicates a different meaning, for the purposes of this ~~Article,~~ Part, the following definitions shall apply:

...."

SECTION 1.6. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not

differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 1.7. G.S. 58-60-20(a) reads as rewritten:

"(a) Each insurer subject to this ~~Article~~ Part shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to this ~~Article.~~Part. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use."

SECTION 1.8. G.S. 58-60-20(i) reads as rewritten:

"(i) For the purposes of this ~~Article,~~Part, the annual premium for a basic policy or rider, for which the insurer reserves the right to change the premium, shall be the maximum annual premium."

SECTION 1.9. G.S. 58-60-25 reads as rewritten:

"**§ 58-60-25. Adoption of Buyer's Guide; requirements.**

Any insurer soliciting life insurance in this State on or after December 1, 1979, shall adopt and use a Buyer's Guide, and the adoption and use by an insurer of the Buyer's Guide promulgated by the National Association of Insurance Commissioners in the NAIC Model Life Insurance Solicitation Regulations shall be in compliance with the requirements of this ~~Article.~~Part."

SECTION 1.10. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 2. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change.

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) An insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

At the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.
(3) The mailing address for payment of premiums to the company.
(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum, the receipt shall clearly show:
a. The name of the payor.
b. The name of the insured under each policy covered by the premium.
c. The amount paid.
d. The date paid.
e. The date-paid-to status of the policy.
f. The policy number.
g. The face amount and type of policy for which the payment will be credited.
h. The signature of the agent.
i. The agent's printed name and unique identification number.
j. The name, complete address, and phone number of the insurer.
(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less

than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms required under this Part shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 1.11. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-90. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-95. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-100. Disclosure requirements.**

(a) An insurer issuing a small face amount policy where, over the term of the policy, the cumulative policy premiums paid may exceed the face amount of the policy, shall clearly and prominently disclose, on or before policy delivery, the length of time until the cumulative policy premiums paid may exceed the face amount of the policy.

(b) If an insurer is required to provide a disclosure under subsection (a) of this section, the insurer shall clearly and prominently disclose, on or before policy delivery, available premium payment plan and product alternatives. If no alternatives exist, the insurer shall clearly and prominently disclose that there are no such alternatives.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-105. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 1.12. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-120. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-125. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund any of the following:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA).

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer.

c. A governmental or church plan defined in section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code.

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

e. Structured settlement annuities.

f. Charitable gift annuities.

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or

after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-130. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-140.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered

guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) of the Internal Revenue Code but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-135. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-140 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed

applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free-look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free-look period shall run concurrently with any other free-look period provided under State law or regulation.

"**§ 58-60-140. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-145. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract

owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end dates of the current report period.

(2) The accumulation and cash-surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART II. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 2. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage or that coverage will be purchased. The notice shall be provided to the employee in connection with the application for coverage or within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For non-key or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART III. GROUP ANNUITY CONTRACTS

SECTION 3. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which ~~such~~ the contract is issued, ~~as herein provided,~~ is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity

contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of ~~such~~ the contract either wholly from the employer's funds or funds contributed by ~~him,~~ the employer, or partly from ~~such~~ the funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder or to the annuitant directly, within 30 days of the annuitant's enrollment in the group annuity contract, an individual certificate for each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART IV. EXPLANATION OF HEADINGS AND EFFECTIVE DATE

SECTION 4. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 5. This act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 655

Committee Substitute Favorable 4/25/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H655-PCS10373-RG-29

Short Title: Better Insurance/Annuity Disclosure.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; AND REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT.

The General Assembly of North Carolina enacts:

PART I. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 1.1. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~ Standards of Disclosure for Annuities and Life Insurance."

SECTION 1.2. Article 60 of Chapter 58 of the General Statutes is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 1.3. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~ Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is

under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 1.4. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~ Individual and group annuity contracts.

(2) Credit life ~~insurance,~~ insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~ (ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 1.5. G.S. 58-60-10 reads as rewritten:

"**§ 58-60-10. Definitions.**

Unless the context of use indicates a different meaning, for the purposes of this ~~Article,~~ Part, the following definitions shall apply:

...."

SECTION 1.6. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not

differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 1.7. G.S. 58-60-20(a) reads as rewritten:

"(a) Each insurer subject to this ~~Article~~ Part shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to this ~~Article.~~ Part. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use."

SECTION 1.8. G.S. 58-60-20(i) reads as rewritten:

"(i) For the purposes of this ~~Article,~~ Part, the annual premium for a basic policy or rider, for which the insurer reserves the right to change the premium, shall be the maximum annual premium."

SECTION 1.9. G.S. 58-60-25 reads as rewritten:

"**§ 58-60-25. Adoption of Buyer's Guide; requirements.**

Any insurer soliciting life insurance in this State on or after December 1, 1979, shall adopt and use a Buyer's Guide, and the adoption and use by an insurer of the Buyer's Guide promulgated by the National Association of Insurance Commissioners in the NAIC Model Life Insurance Solicitation Regulations shall be in compliance with the requirements of this ~~Article.~~ Part."

SECTION 1.10. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 2. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis, and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change.

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) An insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

At the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.
(3) The mailing address for payment of premiums to the company.
(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum, the receipt shall clearly show:
a. The name of the payor.
b. The name of the insured under each policy covered by the premium.
c. The amount paid.
d. The date paid.
e. The date paid-to status of the policy.
f. The policy number.
g. The face amount and type of policy for which the payment will be credited.
h. The signature of the agent.
i. The agent's printed name and unique identification number.
j. The name, complete address, and phone number of the insurer.
(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less

than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms required under this Part shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 1.11. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-90. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-95. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-100. Disclosure requirements.**

(a) An insurer issuing a small face amount policy where, over the term of the policy, the cumulative policy premiums paid may exceed the face amount of the policy, shall clearly and prominently disclose, on or before policy delivery, the length of time until the cumulative policy premiums paid may exceed the face amount of the policy.

(b) If an insurer is required to provide a disclosure under subsection (a) of this section, the insurer shall clearly and prominently disclose, on or before policy delivery, available premium payment plan and product alternatives. If no alternatives exist, the insurer shall clearly and prominently disclose that there are no such alternatives.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-105. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 1.12. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-120. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-125. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund any of the following:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA).

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer.

c. A governmental or church plan defined in section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code.

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

e. Structured settlement annuities.

f. Charitable gift annuities.

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or

after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers, and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-130. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-140.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered

guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) of the Internal Revenue Code but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-135. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-140 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed

applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free-look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free-look period shall run concurrently with any other free-look period provided under State law or regulation.

"**§ 58-60-140. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-145. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract

owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end dates of the current report period.

(2) The accumulation and cash-surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART II. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 2. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage or that coverage will be purchased. The notice shall be provided to the employee in connection with the application for coverage or within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART III. GROUP ANNUITY CONTRACTS

SECTION 3. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~ requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which ~~such~~ the contract is issued, ~~as herein provided,~~ is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity

contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of ~~such~~ the contract either wholly from the employer's funds or funds contributed by ~~him,~~ the employer, or partly from ~~such~~ the funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder or to the annuitant directly, within 30 days of the annuitant's enrollment in the group annuity contract, an individual certificate for each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART IV. EXPLANATION OF HEADINGS AND EFFECTIVE DATE

SECTION 4. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 5. This act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 733*
Committee Substitute Favorable 4/25/05
Third Edition Engrossed 5/4/05

Short Title: License Insurance Statistical Organizations.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LICENSING OF STATISTICAL ORGANIZATIONS BY THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-190 reads as rewritten:

"**§ 58-2-190. Commissioner may require special reports.**

The Commissioner may also address to any authorized insurer, ~~rating organization, advisory organization,~~ statistical organization, joint underwriting or joint reinsurance organization, or the North Carolina Rate Bureau or Motor Vehicle Reinsurance Facility, or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to ~~such~~ the inquiry promptly and truthfully, and ~~such~~ the reply shall be verified, if required by the Commissioner, by such individual, or by such officer or officers of a corporation, as he shall designate."

SECTION 2. G.S. 58-40-1 reads as rewritten:

"**§ 58-40-1. Purposes.**

The purposes of this Article are

(1) To promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;

(2) To authorize the existence and operation of qualified ~~rating organizations and advisory~~ statistical organizations and require that specified ~~rating~~ services of ~~such rating~~ the organizations be generally available to all admitted insurers;

(3) To encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;

(4) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices

that tend to bring about monopoly or to lessen or destroy competition; and

(5) To encourage the most efficient and economic marketing practices."

SECTION 3. G.S. 58-40-5 reads as rewritten:

"**§ 58-40-5. Definitions.**

As used in this Article:

~~(1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, or rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be an advisory organization.~~

(2) Repealed by Session Laws 1991, c. 720, s. 6.

(3) "Inland marine insurance" shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the Commissioner or as established by general custom of the business, as inland marine insurance.

(4) "Member," unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a ~~rating, advisory or other~~ statistical organization.

~~(5) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within the specific authorizations contained in G.S. 58-40-60, 58-40-65, 58-40-70 and 58-40-75, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.~~

(5a) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:

a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, or rating plans or rating systems.

b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be a statistical organization.

c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in G.S. 58-40-60, 58-40,-65, 58-40-70, and 58-40-75 shall be deemed to be a statistical organization.

d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.

(5b) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.

(6) "Subscriber," unless otherwise apparent from the context, means an insurer which is furnished at its request (i) with rates and rating manuals by a ~~rating~~ statistical organization of which it is not a member, or (ii) with advisory services by ~~an advisory~~ a statistical organization of which it is not a member.

(7) "Willful" means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

(8), (9) Repealed by Session Laws 1987, c. 864, s. 66."

SECTION 4. G.S. 58-40-30(a) reads as rewritten:

"(a) With the exception of inland marine insurance that is not written according to manual rates and rating plans, every admitted insurer and every licensed ~~rating~~ statistical organization, which has been designated by any insurer for the filing of rates under G.S. 58-40-40, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State prior to the time they become effective."

SECTION 5. G.S. 58-40-40 reads as rewritten:

"**§ 58-40-40. Delegation of rate making and rate filing obligation.**

(a) An insurer may itself establish rates based on the factors in G.S. 58-40-25 or it may use rates prepared by a ~~rating~~ statistical organization, with average expense factors determined by the ~~rating~~ statistical organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S. 58-40-30 by giving notice to the Commissioner that it uses rates prepared by a designated ~~rating~~ statistical organization, with such information about modifications thereof as are necessary to fully inform the Commissioner. The insurer's rates shall be those filed from time to time by the ~~rating~~ statistical organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer."

SECTION 6. G.S. 58-40-45(c) reads as rewritten:

"(c) No person shall willfully withhold information required by this Article from or knowingly furnish false or misleading information to the Commissioner, any statistical ~~agency~~ organization designated by the Commissioner, ~~any rating or advisory organization,~~ or any insurer, which information will affect the rates, rating plans, loss costs, classifications, or policy forms subject to this Article."

SECTION 7. G.S. 58-40-50 reads as rewritten:

"**§ 58-40-50. ~~Rating~~ Statistical organizations.**

(a) No ~~rating~~ statistical organization shall ~~provide any service relating to rates subject to this Article~~ conduct its operations in this State, and no insurer shall utilize the service of such organization for ~~such~~ any purpose enumerated in G.S. 58-40-5 unless the organization has obtained a license from the Commissioner.

(b) No ~~rating~~ statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A ~~rating~~ statistical organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its ~~business;~~business, all duly certified by the custodian of the originals thereof.

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

(d) If the Commissioner ~~finds~~ determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

~~(f) Every rating organization providing services in this State on September 1, 1977, may continue to provide services thereafter as a rating organization, subject to the provisions of this Article and pending its application to the Commissioner for a license to provide services as a rating organization, which application shall be made within 30 days after September 1, 1977.~~

(g) Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data.

(h) No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities."

SECTION 8. G.S. 58-40-55 is repealed.

SECTION 9. G.S. 58-40-65 reads as rewritten:

"**§ 58-40-65. Insurers authorized to act in concert.**

Subject to and in compliance with the provisions of Articles 1 through 64 of this Chapter authorizing insurers to be members or subscribers of ~~rating or advisory organizations~~ statistical organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, the creation, administration, or termination of a market assistance program, or carrying on of research."

SECTION 10. G.S. 58-40-75 reads as rewritten:

"**§ 58-40-75. Agreements to adhere.**

No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a market assistance program or of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section does not apply to mandatory or voluntary risk sharing plans established under Article 42 of this Chapter or apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-40-95. Provided, however, that members and subscribers of ~~rating or advisory~~ statistical organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a ~~rating or advisory~~ statistical organization, consistently or intermittently use the rates or rating systems made or adopted by a ~~rating~~ statistical organization, or the underwriting rules or policy or bond forms prepared by a ~~rating or advisory~~ statistical organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement."

SECTION 11. G.S. 58-40-80 reads as rewritten:

"**§ 58-40-80. Exchange of information or experience data; consultation with ~~rating~~ statistical organizations and insurers.**

~~Rating~~ Statistical organizations licensed pursuant to G.S. 58-40-50 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with ~~rating~~ statistical organizations and insurers in

other states and may consult with them with respect to rate making and the application of rating systems."

SECTION 12. G.S. 58-40-85 reads as rewritten:

"**§ 58-40-85. Recording and reporting of experience.**

The Commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to him. ~~No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system.~~ The Commissioner may designate one or more ~~rating~~ statistical organizations to assist him in gathering and making compilations of such experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of these designated statistical organizations."

SECTION 13. G.S. 58-40-90 reads as rewritten:

"**§ 58-40-90. Examination of rating, joint underwriting, and joint reinsurance organizations.**

The Commissioner shall, at least once every three years, make or cause to be made an examination of each ~~rating~~ statistical organization licensed pursuant to ~~G.S. 58-40-50 and each advisory organization licensed pursuant to G.S. 58-40-55.~~ G.S. 58-40-50. The Commissioner may, as often as deemed expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state."

SECTION 14. G.S. 58-40-100 reads as rewritten:

"**§ 58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.**

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or ~~rating~~ statistical organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or ~~rating~~ statistical organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner

finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-2-50 or 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

SECTION 15. G.S. 58-40-110 reads as rewritten:

"**§ 58-40-110. Suspension of license.**

(a) Repealed by Session Laws 1985, c. 666, s. 36.

(b) ~~The~~ Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any ~~rating~~ statistical organization or insurer ~~that~~ or impose a monetary penalty against any statistical organization or insurer where (i) the Commissioner has reason to believe that any statistical organization or insurer has violated any provision of this Chapter, or (ii) the statistical agent fails to comply with an order of the Commissioner within the time limited by such order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any ~~rating~~ statistical organization or insurer for failure to comply with an order until the time prescribed for an appeal there from has expired or, if an appeal has been taken, until ~~such~~ the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and ~~such~~ the suspension shall remain in effect for the period fixed by him unless he modifies or rescinds ~~such~~ the suspension, or until the order upon which ~~such~~ the suspension is based is modified, rescinded, or reversed.

(c) No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating his findings, made after a hearing held upon not less than 10 days' written notice to ~~such~~ the person or organization, and specifying the alleged violation."

SECTION 16. G.S. 58-40-130 reads as rewritten:

"**§ 58-40-130. Financial disclosure; rate modifications; reporting requirements.**

(a) The Commissioner may require each insurer subject to this Article to report, on a form prescribed by the Commissioner, its loss and expense experience, investment income, administrative expenses, and other data that he may require, for kinds of insurance or classes of risks that he designates. These reports are in addition to financial or other statements required by Articles 1 through 64 of this Chapter.

(b) The Commissioner may designate one or more ~~rating organizations or advisory~~ statistical organizations to gather and compile the experience and data referred to in subsection (a) of this section for their member companies.

(c) Whereas the provisions enacted by the General Assembly in 1986 regarding modifications in North Carolina civil law may have a prospective effect upon the loss experience of insurers subject to this Article, the Commissioner is authorized to review each company's rates by type of insurance that are in effect on and after January 1, 1987, and, when and where appropriate, require modification of ~~such~~ those rates.

(d) Each insurer subject to this Article shall record the experience and data referred to in subsection (a) of this ~~section arising from causes of action arising against its insureds on and after January 1, 1987.~~section. Such experience and data shall be reported to the Commissioner ~~by March 31, 1988, which report shall be~~ on a form

prescribed by the Commissioner ~~reflecting such experience and data for the one-year period beginning on January 1, 1987. Subsequently, such experience and data shall be reported to the Commissioner~~ by March 31 of each year for each one-year period ending on December 31 of the previous year.

(e) On or before July 1, 1988, and annually thereafter, the Commissioner shall report to the General Assembly the effects, if any, of changes in North Carolina civil law statutes on the experience of insurers subject to this section."

SECTION 17. G.S. 143B-472.96(b) reads as rewritten:

"(b) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set by the Authority under this section. The Authority may also use the forms and rates of ~~rating or advisory~~ statistical organizations licensed under ~~G.S. 58-40-50 or G.S. 58-40-55.~~ G.S. 58-40-50. The Authority may vary from these rates in order to broaden participation by small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The premiums set and forms developed by the Authority under this section must be approved by the Commissioner of Insurance before they may be used."

SECTION 18. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-4. Statistical organizations; licensing; recording and reporting; examination; suspension of license; financial disclosure.**

(a) For purposes of this Article:

(1) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:

a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, rating plans, or rating systems.

b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting in the usual course of that person's profession shall be deemed to be a statistical organization.

c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in this Article shall be deemed to be a statistical organization.

d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers. "Statistical organization" shall not mean the North Carolina Rate Bureau, the North Carolina Motor

Vehicle Reinsurance Facility, the North Carolina Insurance Underwriting Association, or the North Carolina Joint Underwriting Association.

(2) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.

(b) No statistical organization shall conduct its operations in this State, and no insurer shall utilize the service of that organization for any purpose enumerated in this Article unless the organization has obtained a license from the Commissioner. No statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services. A statistical organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business, all duly certified by the custodian of the originals thereof;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

If the Commissioner determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, the Commissioner shall issue a license specifying the authorized activity of the applicant. The Commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked. Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner. Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data. No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities.

(c) Statistical organizations licensed pursuant to subsection (b) of this section and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with statistical organizations and insurers in other states and may consult with them with respect to rate making and the application of rating systems.

(d) The Commissioner shall adopt or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of those insurers may be made available to the Commissioner. The Commissioner may designate one or more statistical organizations to assist him or her in gathering and making compilations of the experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of the designated statistical organizations.

(e) The Commissioner shall, at least once every three years, make or cause to be made an examination of each statistical organization licensed pursuant to subsection (b) of this section. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents, and employees of any statistical organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state.

(f) Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any statistical organization or impose a monetary penalty against any statistical organization where (i) the Commissioner has reason to believe that any statistical organization has violated any provision of this Chapter, or (ii) the statistical organization fails to comply with an order of the Commissioner within the time limited by the order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any statistical organization for failure to comply with an order until the time prescribed for an appeal from the order has expired or, if an appeal has been taken, until the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and the suspension shall remain in effect for the period fixed by the Commissioner unless the Commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed. No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating the Commissioner's findings, made after a hearing held upon not less than 10 days' written notice to the person or organization, and specifying the alleged violation."

SECTION 19. G.S. 58-37(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory ~~rating~~ statistical organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of

application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. The order shall not affect any contract or policy made or issued before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."

SECTION 20. G.S. 58-41-50(b) reads as rewritten:

"(b) With the exception of inland marine insurance that is not written according to manual rates and rating plans, all rates or prospective loss cost multipliers by licensed fire and casualty companies or their designated ~~rating~~ statistical organizations must be filed with the Commissioner at least 60 days before they may be used in this State. Any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the filer."

SECTION 21. G.S. 58-42-10(a) reads as rewritten:

"(a) Each plan shall require participation:

(1) By all insurers licensed in this State to write the kinds of insurance covered by the specific plan;

(2) By all agents licensed to represent those insurers for that kind of insurance; and

(3) By every ~~rating~~ statistical organization that makes rates for that kind of insurance."

SECTION 22. G.S. 58-42-25 reads as rewritten:

"**§ 58-42-25. Basis for participation.**

Each plan shall specify the basis for participation by insurers, agents, ~~rating~~ statistical organizations, and other participants and shall specify the conditions under which risks shall be accepted and underwritten by the plan."

SECTION 23. This act becomes effective October 1, 2005.

HOUSE BILL 733:
License Insurance Statistical Organizations.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 27, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Tim Hovis
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 733 makes the following changes:

- ***Clarifies the licensing requirements for rating organizations, advisory organizations and statistical agents by defining all three under the category of "statistical organization."***
- ***Licenses statistical organizations that are collecting and disseminating data for Rate Bureau lines of coverage (private personal auto, residential homeowners, workers compensation) in addition to other commercial lines of coverage;***
- ***Provides the Commissioner specific authority and grounds to revoke or suspend licenses***
- ***Strengthens reporting requirements for commercial and Rate Bureau lines.***

[As introduced, this bill was identical to S715, as introduced by Sen. Dalton, which is currently in Senate Commerce.]

EFFECTIVE DATE: House Bill 733 becomes effective October 1, 2005.

Below is a summary prepared by Mr. Frank Folger, Legislative Counsel, Department of Insurance.

HOUSE BILL 733 – LICENSE INSURANCE STATISTICAL ORGANIZATIONS

The majority of the sections (Sections 1-2, 4-5, 9, 11, 13-14, 16-17, and 19-22) simply replace references to "rating organization" and "advisory organization" with "statistical organization". The remaining sections, among other technical things,:

- Define "statistical organization" by essentially consolidating the definitions in current law of "rating organization" and "advisory organization" and adding the duties performed by a statistical agent within that definition and deleting the terms "rating organization" and "advisory organization" and their accompanying definitions. (Section 3)
- Add specific reference to loss costs in a provision that prohibits a person from willfully withholding information or knowingly furnishing false or misleading information to an insurer, a statistical organization, and the Commissioner. (Section 6)
- Clarify that no statistical organization may operate in this State without a license, that copies of a statistical organization's corporate organizational documents currently

required to be submitted to the Commissioner be duly certified, that each statistical organization file a statistical plan with the Commissioner for each line of insurance for which it requests to be licensed, that the Commissioner may modify that plan to collect additional types of date, and that no statistical organization may engage in any unfair or unreasonable practice. (Section 7)

- Require insurers, for lines of insurance that require data to be reported, report their data to one of the designated statistical organizations.(Section 12)
- Authorize license revocation and monetary penalty imposition pursuant to G.S. 58-2-70 for violations by a statistical organization. (Section 15)
- Apply the same licensure requirements and regulations to statistical organizations that service coverage lines under the jurisdiction of the Rate Bureau. (Section 18)

This summary was substantially contributed to by Mr. Frank Folger, Department of Insurance.

H0733e3-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 733*

Committee Substitute Favorable 4/25/05
Third Edition Engrossed 5/4/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H733-CSRG-27 [v.1]

6/27/2005 3:36:25 PM

Short Title: License Insurance Statistical Organizations.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LICENSING OF STATISTICAL ORGANIZATIONS BY THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-190 reads as rewritten:

"**§ 58-2-190. Commissioner may require special reports.**

The Commissioner may also address to any authorized insurer, ~~rating organization, advisory organization,~~ statistical organization, joint underwriting or joint reinsurance organization, or the North Carolina Rate Bureau or Motor Vehicle Reinsurance Facility, or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to ~~such~~ the inquiry promptly and truthfully, and ~~such~~ the reply shall be verified, if required by the Commissioner, by such individual, or by such officer or officers of a corporation, as he shall designate."

SECTION 2. G.S. 58-40-1 reads as rewritten:

"**§ 58-40-1. Purposes.**

The purposes of this Article are

(1) To promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;

(2) To authorize the existence and operation of qualified ~~rating organizations and advisory~~ statistical organizations and require that specified ~~rating~~ services of ~~such rating~~ the organizations be generally available to all admitted insurers;

(3) To encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;

(4) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and

(5) To encourage the most efficient and economic marketing practices."

SECTION 3. G.S. 58-40-5 reads as rewritten:

"**§ 58-40-5. Definitions.**

As used in this Article:

~~(1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, or rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be an advisory organization.~~

(2) Repealed by Session Laws 1991, c. 720, s. 6.

(3) "Inland marine insurance" shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the Commissioner or as established by general custom of the business, as inland marine insurance.

(4) "Member," unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a ~~rating, advisory or other~~ statistical organization.

~~(5) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within the specific authorizations contained in G.S. 58-40-60, 58-40-65, 58-40-70 and 58-40-75, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.~~

(5a) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:

a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, or rating plans or rating systems.

b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting

in the usual course of his profession shall be deemed to be a statistical organization.

c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in G.S. 58-40-60, 58-40,-65, 58-40-70, and 58-40-75 shall be deemed to be a statistical organization.

d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.

(5b) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.

(6) "Subscriber," unless otherwise apparent from the context, means an insurer which is furnished at its request (i) with rates and rating manuals by a ~~rating~~ statistical organization of which it is not a member, or (ii) with advisory services by ~~an advisory~~ a statistical organization of which it is not a member.

(7) "Willful" means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

(8), (9) Repealed by Session Laws 1987, c. 864, s. 66."

SECTION 4. G.S. 58-40-30(a) reads as rewritten:

"(a) With the exception of inland marine insurance that is not written according to manual rates and rating plans, every admitted insurer and every licensed ~~rating~~ statistical organization, which has been designated by any insurer for the filing of rates under G.S. 58-40-40, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State prior to the time they become effective."

SECTION 5. G.S. 58-40-40 reads as rewritten:

"**§ 58-40-40. Delegation of rate making and rate filing obligation.**

(a) An insurer may itself establish rates based on the factors in G.S. 58-40-25 or it may use rates prepared by a ~~rating~~ statistical organization, with average expense factors determined by the ~~rating~~ statistical organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S. 58-40-30 by giving notice to the Commissioner that it uses rates prepared by a designated ~~rating~~ statistical organization, with such information about modifications thereof as are necessary to fully inform the Commissioner. The insurer's rates shall be those filed from time to time by the ~~rating~~ statistical organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer."

SECTION 6. G.S. 58-40-45(c) reads as rewritten:

"(c) No person shall willfully withhold information required by this Article from or knowingly furnish false or misleading information to the Commissioner, any statistical ~~agency~~ organization designated by the Commissioner, ~~any rating or advisory organization,~~ or any insurer, which information will affect the rates, rating plans, loss costs, classifications, or policy forms subject to this Article."

SECTION 7. G.S. 58-40-50 reads as rewritten:

"**§ 58-40-50. ~~Rating~~ Statistical organizations.**

(a) No ~~rating~~ statistical organization shall ~~provide any service relating to rates subject to this Article~~ conduct its operations in this State, and no insurer shall utilize the service of such organization for ~~such~~ any purpose enumerated in G.S. 58-40-5 unless the organization has obtained a license from the Commissioner.

(b) No ~~rating~~ statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A ~~rating~~ statistical organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its ~~business;~~business, all duly certified by the custodian of the originals thereof.

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

(d) If the Commissioner ~~finds~~ determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

~~(f) Every rating organization providing services in this State on September 1, 1977, may continue to provide services thereafter as a rating organization, subject to the provisions of this Article and pending its application to the Commissioner for a license to provide services as a rating organization, which application shall be made within 30 days after September 1, 1977.~~

(g) Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data.

(h) No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities."

SECTION 8. G.S. 58-40-55 is repealed.

SECTION 9. G.S. 58-40-65 reads as rewritten:

"**§ 58-40-65. Insurers authorized to act in concert.**

Subject to and in compliance with the provisions of Articles 1 through 64 of this Chapter authorizing insurers to be members or subscribers of ~~rating or advisory organizations~~ statistical organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, the creation, administration, or termination of a market assistance program, or carrying on of research."

SECTION 10. G.S. 58-40-75 reads as rewritten:

"**§ 58-40-75. Agreements to adhere.**

No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a market assistance program or of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section does not apply to mandatory or voluntary risk sharing plans established under Article 42 of this Chapter or apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-40-95. Provided, however, that members and subscribers of ~~rating or advisory~~ statistical organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a ~~rating or advisory~~ statistical organization, consistently or intermittently use the rates or rating systems made or adopted by a ~~rating~~ statistical organization, or the underwriting rules or policy or bond forms prepared by a ~~rating or advisory~~ statistical organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement."

SECTION 11. G.S. 58-40-80 reads as rewritten:

"**§ 58-40-80. Exchange of information or experience data; consultation with ~~rating~~ statistical organizations and insurers.**

~~Rating~~ Statistical organizations licensed pursuant to G.S. 58-40-50 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with ~~rating~~ statistical organizations and insurers in

other states and may consult with them with respect to rate making and the application of rating systems."

SECTION 12. G.S. 58-40-85 reads as rewritten:

"**§ 58-40-85. Recording and reporting of experience.**

The Commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to him. ~~No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system.~~ The Commissioner may designate one or more ~~rating~~ statistical organizations to assist him in gathering and making compilations of such experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of these designated statistical organizations."

SECTION 13. G.S. 58-40-90 reads as rewritten:

"**§ 58-40-90. Examination of rating, joint underwriting, and joint reinsurance organizations.**

The Commissioner shall, at least once every three years, make or cause to be made an examination of each ~~rating~~ statistical organization licensed pursuant to ~~G.S. 58-40-50 and each advisory organization licensed pursuant to G.S. 58-40-55.~~ G.S. 58-40-50. The Commissioner may, as often as deemed expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state."

SECTION 14. G.S. 58-40-100 reads as rewritten:

"**§ 58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.**

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or ~~rating~~ statistical organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or ~~rating~~ statistical organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner

finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-2-50 or 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

SECTION 15. G.S. 58-40-110 reads as rewritten:

"**§ 58-40-110. Suspension of license.**

(a) Repealed by Session Laws 1985, c. 666, s. 36.

(b) ~~The~~ Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any ~~rating~~ statistical organization or insurer ~~that~~ or impose a monetary penalty against any statistical organization or insurer where (i) the Commissioner has reason to believe that any statistical organization or insurer has violated any provision of this Chapter, or (ii) the statistical agent fails to comply with an order of the Commissioner within the time limited by such order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any ~~rating~~ statistical organization or insurer for failure to comply with an order until the time prescribed for an appeal there from has expired or, if an appeal has been taken, until ~~such~~ the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and ~~such~~ the suspension shall remain in effect for the period fixed by him unless he modifies or rescinds ~~such~~ the suspension, or until the order upon which ~~such~~ the suspension is based is modified, rescinded, or reversed.

(c) No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating his findings, made after a hearing held upon not less than 10 days' written notice to ~~such~~ the person or organization, and specifying the alleged violation."

SECTION 16. G.S. 58-40-130 reads as rewritten:

"**§ 58-40-130. Financial disclosure; rate modifications; reporting requirements.**

(a) The Commissioner may require each insurer subject to this Article to report, on a form prescribed by the Commissioner, its loss and expense experience, investment income, administrative expenses, and other data that he may require, for kinds of insurance or classes of risks that he designates. These reports are in addition to financial or other statements required by Articles 1 through 64 of this Chapter.

(b) The Commissioner may designate one or more ~~rating organizations or advisory~~ statistical organizations to gather and compile the experience and data referred to in subsection (a) of this section for their member companies.

(c) Whereas the provisions enacted by the General Assembly in 1986 regarding modifications in North Carolina civil law may have a prospective effect upon the loss experience of insurers subject to this Article, the Commissioner is authorized to review each company's rates by type of insurance that are in effect on and after January 1, 1987, and, when and where appropriate, require modification of ~~such~~ those rates.

(d) Each insurer subject to this Article shall record the experience and data referred to in subsection (a) of this ~~section arising from causes of action arising against its insureds on and after January 1, 1987.~~section. Such experience and data shall be reported to the Commissioner ~~by March 31, 1988, which report shall be~~ on a form

prescribed by the Commissioner ~~reflecting such experience and data for the one-year period beginning on January 1, 1987. Subsequently, such experience and data shall be reported to the Commissioner~~ by March 31 of each year for each one-year period ending on December 31 of the previous year.

(e) On or before July 1, 1988, and annually thereafter, the Commissioner shall report to the General Assembly the effects, if any, of changes in North Carolina civil law statutes on the experience of insurers subject to this section."

SECTION 17. G.S. 143B-472.96(b) reads as rewritten:

"(b) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set by the Authority under this section. The Authority may also use the forms and rates of ~~rating or advisory~~ statistical organizations licensed under ~~G.S. 58-40-50 or G.S. 58-40-55.~~ G.S. 58-40-50. The Authority may vary from these rates in order to broaden participation by small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The premiums set and forms developed by the Authority under this section must be approved by the Commissioner of Insurance before they may be used."

SECTION 18. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-4. Statistical organizations; licensing; recording and reporting; examination; suspension of license; financial disclosure.**

(a) For purposes of this Article:

(1) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:

a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, rating plans, or rating systems.

b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting in the usual course of that person's profession shall be deemed to be a statistical organization.

c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in this Article shall be deemed to be a statistical organization.

d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.

"Statistical organization" shall not mean the North Carolina Rate Bureau, the North Carolina Motor Vehicle Reinsurance Facility, the North Carolina Insurance Underwriting Association, or the North Carolina Joint Underwriting Association.

(2) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.

(b) No statistical organization shall conduct its operations in this State, and no insurer shall utilize the service of that organization for any purpose enumerated in this Article unless the organization has obtained a license from the Commissioner. No statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services. A statistical organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business, all duly certified by the custodian of the originals thereof;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

If the Commissioner determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, the Commissioner shall issue a license specifying the authorized activity of the applicant. The Commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked. Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner. Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data. No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities.

(c) Statistical organizations licensed pursuant to subsection (b) of this section and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with statistical organizations and insurers in

other states and may consult with them with respect to rate making and the application of rating systems.

(d) The Commissioner shall adopt or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of those insurers may be made available to the Commissioner. The Commissioner may designate one or more statistical organizations to assist him or her in gathering and making compilations of the experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of the designated statistical organizations.

(e) The Commissioner shall, at least once every three years, make or cause to be made an examination of each statistical organization licensed pursuant to subsection (b) of this section. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents, and employees of any statistical organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state.

(f) Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any statistical organization or impose a monetary penalty against any statistical organization where (i) the Commissioner has reason to believe that any statistical organization has violated any provision of this Chapter, or (ii) the statistical organization fails to comply with an order of the Commissioner within the time limited by the order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any statistical organization for failure to comply with an order until the time prescribed for an appeal from the order has expired or, if an appeal has been taken, until the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and the suspension shall remain in effect for the period fixed by the Commissioner unless the Commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed. No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating the Commissioner's findings, made after a hearing held upon not less than 10 days' written notice to the person or organization, and specifying the alleged violation."

SECTION 19. G.S. 58-37(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory ~~rating~~ statistical organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of

the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. The order shall not affect any contract or policy made or issued before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."

SECTION 20. G.S. 58-41-50(b) reads as rewritten:

"(b) With the exception of inland marine insurance that is not written according to manual rates and rating plans, all rates or prospective loss cost multipliers by licensed fire and casualty companies or their designated ~~rating~~ statistical organizations must be filed with the Commissioner at least 60 days before they may be used in this State. Any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the filer."

SECTION 21. G.S. 58-42-10(a) reads as rewritten:

"(a) Each plan shall require participation:

(1) By all insurers licensed in this State to write the kinds of insurance covered by the specific plan;

(2) By all agents licensed to represent those insurers for that kind of insurance; and

(3) By every ~~rating~~ statistical organization that makes rates for that kind of insurance."

SECTION 22. G.S. 58-42-25 reads as rewritten:

"**§ 58-42-25. Basis for participation.**

Each plan shall specify the basis for participation by insurers, agents, ~~rating~~ statistical organizations, and other participants and shall specify the conditions under which risks shall be accepted and underwritten by the plan."

SECTION 23. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 733*

Committee Substitute Favorable 4/25/05
Third Edition Engrossed 5/4/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H733-PCS70524-RG-27

Short Title: License Insurance Statistical Organizations.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LICENSING OF STATISTICAL ORGANIZATIONS BY THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-190 reads as rewritten:

"**§ 58-2-190. Commissioner may require special reports.**

The Commissioner may also address to any authorized insurer, ~~rating organization, advisory organization,~~ statistical organization, joint underwriting or joint reinsurance organization, or the North Carolina Rate Bureau or Motor Vehicle Reinsurance Facility, or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to ~~such~~ the inquiry promptly and truthfully, and ~~such~~ the reply shall be verified, if required by the Commissioner, by such individual, or by such officer or officers of a corporation, as he shall designate."

SECTION 2. G.S. 58-40-1 reads as rewritten:

"**§ 58-40-1. Purposes.**

The purposes of this Article are

(1) To promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;

(2) To authorize the existence and operation of qualified ~~rating organizations and advisory~~ statistical organizations and require that specified ~~rating~~ services of ~~such rating~~ the organizations be generally available to all admitted insurers;

(3) To encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;

(4) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and

(5) To encourage the most efficient and economic marketing practices."

SECTION 3. G.S. 58-40-5 reads as rewritten:

"**§ 58-40-5. Definitions.**

As used in this Article:

~~(1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, or rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be an advisory organization.~~

(2) Repealed by Session Laws 1991, c. 720, s. 6.

(3) "Inland marine insurance" shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the Commissioner or as established by general custom of the business, as inland marine insurance.

(4) "Member," unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a ~~rating, advisory or other~~ statistical organization.

~~(5) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within the specific authorizations contained in G.S. 58-40-60, 58-40-65, 58-40-70 and 58-40-75, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.~~

(5a) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:

a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, or rating plans or rating systems.

b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting

in the usual course of his profession shall be deemed to be a statistical organization.

c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in G.S. 58-40-60, 58-40-65, 58-40-70, and 58-40-75 shall be deemed to be a statistical organization.

d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.

(5b) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.

(6) "Subscriber," unless otherwise apparent from the context, means an insurer which is furnished at its request (i) with rates and rating manuals by a ~~rating~~ statistical organization of which it is not a member, or (ii) with advisory services by ~~an advisory~~ a statistical organization of which it is not a member.

(7) "Willful" means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

(8), (9) Repealed by Session Laws 1987, c. 864, s. 66."

SECTION 4. G.S. 58-40-30(a) reads as rewritten:

"(a) With the exception of inland marine insurance that is not written according to manual rates and rating plans, every admitted insurer and every licensed ~~rating~~ statistical organization, which has been designated by any insurer for the filing of rates under G.S. 58-40-40, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State prior to the time they become effective."

SECTION 5. G.S. 58-40-40 reads as rewritten:

"**§ 58-40-40. Delegation of rate making and rate filing obligation.**

(a) An insurer may itself establish rates based on the factors in G.S. 58-40-25 or it may use rates prepared by a ~~rating~~ statistical organization, with average expense factors determined by the ~~rating~~ statistical organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S. 58-40-30 by giving notice to the Commissioner that it uses rates prepared by a designated ~~rating~~ statistical organization, with such information about modifications thereof as are necessary to fully inform the Commissioner. The insurer's rates shall be those filed from time to time by the ~~rating~~ statistical organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer."

SECTION 6. G.S. 58-40-45(c) reads as rewritten:

"(c) No person shall willfully withhold information required by this Article from or knowingly furnish false or misleading information to the Commissioner, any statistical ~~agency~~ organization designated by the Commissioner, ~~any rating or advisory organization,~~ or any insurer, which information will affect the rates, rating plans, loss costs, classifications, or policy forms subject to this Article."

SECTION 7. G.S. 58-40-50 reads as rewritten:

"**§ 58-40-50. ~~Rating~~ Statistical organizations.**

(a) No ~~rating~~ statistical organization shall ~~provide any service relating to rates subject to this Article~~ conduct its operations in this State, and no insurer shall utilize the service of such organization for ~~such~~ any purpose enumerated in G.S. 58-40-5 unless the organization has obtained a license from the Commissioner.

(b) No ~~rating~~ statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A ~~rating~~ statistical organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its ~~business;~~business, all duly certified by the custodian of the originals thereof;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

(d) If the Commissioner ~~finds~~ determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

~~(f) Every rating organization providing services in this State on September 1, 1977, may continue to provide services thereafter as a rating organization, subject to the provisions of this Article and pending its application to the Commissioner for a license to provide services as a rating organization, which application shall be made within 30 days after September 1, 1977.~~

(g) Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data.

(h) No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities."

SECTION 8. G.S. 58-40-55 is repealed.

SECTION 9. G.S. 58-40-65 reads as rewritten:

"**§ 58-40-65. Insurers authorized to act in concert.**

Subject to and in compliance with the provisions of Articles 1 through 64 of this Chapter authorizing insurers to be members or subscribers of ~~rating or advisory organizations~~ statistical organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, the creation, administration, or termination of a market assistance program, or carrying on of research."

SECTION 10. G.S. 58-40-75 reads as rewritten:

"**§ 58-40-75. Agreements to adhere.**

No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a market assistance program or of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section does not apply to mandatory or voluntary risk sharing plans established under Article 42 of this Chapter or apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-40-95. Provided, however, that members and subscribers of ~~rating or advisory~~ statistical organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a ~~rating or advisory~~ statistical organization, consistently or intermittently use the rates or rating systems made or adopted by a ~~rating~~ statistical organization, or the underwriting rules or policy or bond forms prepared by a ~~rating or advisory~~ statistical organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement."

SECTION 11. G.S. 58-40-80 reads as rewritten:

"**§ 58-40-80. Exchange of information or experience data; consultation with ~~rating~~ statistical organizations and insurers.**

~~Rating~~ Statistical organizations licensed pursuant to G.S. 58-40-50 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with ~~rating~~ statistical organizations and insurers in

other states and may consult with them with respect to rate making and the application of rating systems."

SECTION 12. G.S. 58-40-85 reads as rewritten:

"**§ 58-40-85. Recording and reporting of experience.**

The Commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to him. ~~No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system.~~ The Commissioner may designate one or more ~~rating~~ statistical organizations to assist him in gathering and making compilations of such experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of these designated statistical organizations."

SECTION 13. G.S. 58-40-90 reads as rewritten:

"**§ 58-40-90. Examination of rating, joint underwriting, and joint reinsurance organizations.**

The Commissioner shall, at least once every three years, make or cause to be made an examination of each ~~rating~~ statistical organization licensed pursuant to ~~G.S. 58-40-50 and each advisory organization licensed pursuant to G.S. 58-40-55.~~ G.S. 58-40-50. The Commissioner may, as often as deemed expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state."

SECTION 14. G.S. 58-40-100 reads as rewritten:

"**§ 58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.**

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or ~~rating~~ statistical organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or ~~rating~~ statistical organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner

finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-2-50 or 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

SECTION 15. G.S. 58-40-110 reads as rewritten:

"**§ 58-40-110. Suspension of license.**

(a) Repealed by Session Laws 1985, c. 666, s. 36.

(b) ~~The~~ Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any ~~rating~~ statistical organization or insurer ~~that~~ or impose a monetary penalty against any statistical organization or insurer where (i) the Commissioner has reason to believe that any statistical organization or insurer has violated any provision of this Chapter, or (ii) the statistical agent fails to comply with an order of the Commissioner within the time limited by such order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any ~~rating~~ statistical organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until ~~such~~ the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and ~~such~~ the suspension shall remain in effect for the period fixed by him unless he modifies or rescinds ~~such~~ the suspension, or until the order upon which ~~such~~ the suspension is based is modified, rescinded, or reversed.

(c) No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating his findings, made after a hearing held upon not less than 10 days' written notice to ~~such~~ the person or organization, and specifying the alleged violation."

SECTION 16. G.S. 58-40-130 reads as rewritten:

"**§ 58-40-130. Financial disclosure; rate modifications; reporting requirements.**

(a) The Commissioner may require each insurer subject to this Article to report, on a form prescribed by the Commissioner, its loss and expense experience, investment income, administrative expenses, and other data that he may require, for kinds of insurance or classes of risks that he designates. These reports are in addition to financial or other statements required by Articles 1 through 64 of this Chapter.

(b) The Commissioner may designate one or more ~~rating organizations or advisory~~ statistical organizations to gather and compile the experience and data referred to in subsection (a) of this section for their member companies.

(c) Whereas the provisions enacted by the General Assembly in 1986 regarding modifications in North Carolina civil law may have a prospective effect upon the loss experience of insurers subject to this Article, the Commissioner is authorized to review each company's rates by type of insurance that are in effect on and after January 1, 1987, and, when and where appropriate, require modification of ~~such~~ those rates.

(d) Each insurer subject to this Article shall record the experience and data referred to in subsection (a) of this ~~section arising from causes of action arising against its insureds on and after January 1, 1987.~~section. Such experience and data shall be reported to the Commissioner ~~by March 31, 1988, which report shall be~~ on a form

prescribed by the Commissioner ~~reflecting such experience and data for the one-year period beginning on January 1, 1987. Subsequently, such experience and data shall be reported to the Commissioner~~ by March 31 of each year for each one-year period ending on December 31 of the previous year.

(e) On or before July 1, 1988, and annually thereafter, the Commissioner shall report to the General Assembly the effects, if any, of changes in North Carolina civil law statutes on the experience of insurers subject to this section."

SECTION 17. G.S. 143B-472.96(b) reads as rewritten:

"(b) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set by the Authority under this section. The Authority may also use the forms and rates of ~~rating or advisory~~ statistical organizations licensed under ~~G.S. 58-40-50 or G.S. 58-40-55.~~ G.S. 58-40-50. The Authority may vary from these rates in order to broaden participation by small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The premiums set and forms developed by the Authority under this section must be approved by the Commissioner of Insurance before they may be used."

SECTION 18. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-4. Statistical organizations; licensing; recording and reporting; examination; suspension of license; financial disclosure.**

(a) For purposes of this Article:

(1) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:

a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, rating plans, or rating systems.

b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting in the usual course of that person's profession shall be deemed to be a statistical organization.

c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in this Article shall be deemed to be a statistical organization.

d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.

"Statistical organization" shall not mean the North Carolina Rate Bureau, the North Carolina Motor Vehicle Reinsurance Facility, the

North Carolina Insurance Underwriting Association, or the North Carolina Joint Underwriting Association.

(2) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.

(b) No statistical organization shall conduct its operations in this State, and no insurer shall utilize the service of that organization for any purpose enumerated in this Article unless the organization has obtained a license from the Commissioner. No statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services. A statistical organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business, all duly certified by the custodian of the originals thereof;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

If the Commissioner determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed and that all requirements of law are met, the Commissioner shall issue a license specifying the authorized activity of the applicant. The Commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked. Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner. Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data. No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities.

(c) Statistical organizations licensed pursuant to subsection (b) of this section and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with statistical organizations and insurers in other states and may consult with them with respect to rate making and the application of rating systems.

(d) The Commissioner shall adopt or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of those insurers may be made available to the Commissioner. The Commissioner may designate one or more statistical organizations to assist him or her in gathering and making compilations of the experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of the designated statistical organizations.

(e) The Commissioner shall, at least once every three years, make or cause to be made an examination of each statistical organization licensed pursuant to subsection (b) of this section. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents, and employees of any statistical organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state.

(f) Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any statistical organization or impose a monetary penalty against any statistical organization where (i) the Commissioner has reason to believe that any statistical organization has violated any provision of this Chapter, or (ii) the statistical organization fails to comply with an order of the Commissioner within the time limited by the order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any statistical organization for failure to comply with an order until the time prescribed for an appeal from the order has expired or, if an appeal has been taken, until the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and the suspension shall remain in effect for the period fixed by the Commissioner unless the Commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed. No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating the Commissioner's findings, made after a hearing held upon not less than 10 days' written notice to the person or organization, and specifying the alleged violation."

SECTION 19. G.S. 58-37(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory ~~rating~~ statistical organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of

application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. The order shall not affect any contract or policy made or issued before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."

SECTION 20. G.S. 58-41-50(b) reads as rewritten:

"(b) With the exception of inland marine insurance that is not written according to manual rates and rating plans, all rates or prospective loss cost multipliers by licensed fire and casualty companies or their designated ~~rating~~ statistical organizations must be filed with the Commissioner at least 60 days before they may be used in this State. Any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the filer."

SECTION 21. G.S. 58-42-10(a) reads as rewritten:

"(a) Each plan shall require participation:

(1) By all insurers licensed in this State to write the kinds of insurance covered by the specific plan;

(2) By all agents licensed to represent those insurers for that kind of insurance; and

(3) By every ~~rating~~ statistical organization that makes rates for that kind of insurance."

SECTION 22. G.S. 58-42-25 reads as rewritten:

"**§ 58-42-25. Basis for participation.**

Each plan shall specify the basis for participation by insurers, agents, ~~rating~~ statistical organizations, and other participants and shall specify the conditions under which risks shall be accepted and underwritten by the plan."

SECTION 23. This act becomes effective October 1, 2005.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valauri	Nationwide
Glenn Jones	BMAC
BILL HAGE	~~Insurance Agents of N.C~~ ACCI
Joe Stewart	FNC
Cam Cover	BPMHC
Ken Lewis	FirstHealth of the Carolinas
	JD, AL, PA
Robert Paschal	Young, Moore
John McMullan	NFIC
Sharon Miller	CUCA
Suzanne Buckley	Gov Office

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Woodson	NC Farm Bureau
Bill Scoggin	George's Friend !
[signature]	NMRS - Bill's Friend !
David Stoller	State Farm
David Barnes	Poyner Spruill LLP
Alice Garland	NCDOC
[signature]	JPAssoc
Stephanie Dorko	Charlotte Chamber
[signature]	NCFPC
Tripp Melton	Sen. Stevens Staff
Kathleen Edwards	UNC-CH Legis Ref. Service
[signature]	NCRA
Ann Lee	OUAS
Lynn Donnor	NBO

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ewell Hall Brame	BHGR
Barbara Canales	BHGR
Brad Lovin	NC Manufactured Housing Inst.
Brad Lamb	NC Consumers Council

Senate Commerce Committee
Thursday, June 30, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 255	Finance Law Changes 1.	Senator Kerr
HB 653	Credit Insurance Changes.-AB	Representative Holliman
HB 673	Interstate Insurance Product Reg. Compact.-AB	Representative Holliman
HB 734	Improve Managed Care Statutes.-AB	Representative Holliman Representative Wright
HB 735	Accident & Health Insur./Rate Stabilization.-AB	Representative Holliman Representative Wright
HB 737	Improve Health Insurance Underwriting.-AB	Representative Holliman Representative Wright
HB 1236	Insurance Bd. of Governors Membership.	Representative Holliman

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, June 30, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on June 30, 2005, in Room 1027 of the Legislative Building. Eleven members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized the pages: Jonathan Watts of Taylorsville, sponsored by Senator John Garwood; Joe Grew of Raleigh sponsored by Senator Neal Hunt; Alex Urquart of Speed, sponsored by Senator Clark Jenkins; Milton Thomas of Southern Pines, sponsored by Senator Harris Blake, and Carolyn Allen of Rock Hill, South Carolina, and Rachel Bradshaw of Gastonia, sponsored by Senator David Hoyle.

Senator Soles brought up for consideration HB 737, Improve Health Insurance Underwriting-AB. Senator Katie Dorsett moved adoption of a committee substitute for the purpose of discussion. The motion carried.

Senator Soles brought up for consideration HB 734, Improve Managed Care Statutes.-AB. Senator Katie Dorsett moved adoption of a committee substitute for the purpose of discussion. The motion carried. Senator Jim Forrester moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles then took up the committee substitute for HB 737, Improve Health Insurance Underwriting-AB. He recognized Representative Hugh Holliman, who in turn requested Mr. Frank Folger, Department of Insurance, to explain the bill. Senator Tom Apodaca moved an unfavorable report of the bill, but favorable as to the committee substitute bill. The motion carried.

Senator Soles recognized Mr. Folger again to explain HB 653, Credit Insurance Changes.-AB on behalf of Representative Holliman. Senator Richard Stevens moved for a favorable report of the bill. The motion carried.

Senator Soles recognized Mr. Folger once more, to explain HB 673, Interstate Insurance Product Reg. Compact.-AB, again on behalf of Representative Holliman. Senator Apodaca moved for a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Thomas Wright to explain HB 1236, Insurance Bd. of Governors Membership, on behalf of Representative Hugh Holliman. Senator Malcolm Graham moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Apodaca moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles once more recognized Mr. Folger to explain HB 735, Accident & Health Insur./Rate Stabilization on behalf of Representative Hugh Holliman. Senator Eddie Goodall

moved the adoption of a committee substitute for the purpose of discussion. The motion carried. Senator Apodaca moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles asked Mr. Walker Reagan, Committee Counsel, to introduce SB 255, Finance Law Changes 1. Senator Forrester moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator John Kerr explained the reason for the bill, and asked Ms. Gann Watson, Bill Drafting Division, to explain the provisions of the bill. Ms. Watson told the committee members the bill is patterned after the "Healthy New York" legislation that has been in place for six years. After a brief presentation of the provisions of the bill and a few questions, Senator Soles noted the hour for the meeting had come to a close. Senator Soles told the committee the bill would be on a future agenda for further consideration.

The meeting adjourned at 12:00 noon.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, June 30, 2005

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

FAVORABLE

H.B.(CS #1) **653** Credit Insurance Changes.-AB
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **673** Interstate Insurance Product Reg. Compact.-AB
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 05, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **737** Improve Health Insurance Underwriting.-AB

Draft Number:	PCS 10376
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1236** Insurance Bd. of Governors Membership.

Draft Number:	PCS 80435
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

CORRECTED REPORT

Thursday, July 21, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **734** Improve Managed Care Statutes.-AB

Draft Number:	PCS 70528
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 737*

Committee Substitute Favorable 4/20/05

Short Title: Improve Health Insurance Underwriting.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED, LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS FOR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO FIVE; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; AND AMEND THE UTILIZATION REVIEW LAWS TO CLARIFY THAT SUCH LAWS PLAINLY APPLY TO INDIVIDUAL INSURANCE COVERAGE AS WELL AS GROUP COVERAGE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsection to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including physical and mental illnesses).

(3) Claims experience.

(4) Duration from issue.

(5) Receipt of health care.

(6) Medical history.

(7) Genetic information."

SECTION 2.(a) G.S. 58-65-60 is amended by adding the following new subsection to read:

"**§ 58-65-60. Subscribers' contracts; required and prohibited provisions.**

...

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(b) G.S. 58-67-85 is amended by adding the following new subsection to read:

"**§ 58-67-85. Master group contracts, filing requirement; required and prohibited provisions.**

...

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(c) G.S. 58-51-80(c) reads as rewritten:

"**§ 58-51-80. Group accident and health insurance defined.**

...

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. With the exception of disability income insurance, employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 3. G.S. 58-51-30(b) reads as rewritten:

"**§ 58-51-30. Policies to cover newborn infants, foster children, and adopted children.**

...

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

SECTION 4.(a) G.S. 58-51-15(a)(2) reads as rewritten:

"**§ 58-51-15. Accident and health policy provisions.**

(a) Required Provisions. – Except as provided in subsection (c) of this section each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this subsection in the substance of the words that appear in this section. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

...

(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy provision may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars ($5,000) or more for any one sickness or injury; disability income policies affording benefits of one hundred dollars ($100.00) or more per month for not less than 12 months; and

franchise policies. Other policies to which this section applies must delete the words "except fraudulent misstatements."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of G.S. 58-51-15(b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE."

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 4.(b) G.S. 58-51-15(h) reads as rewritten:

"**§ 58-51-15. Accident and health policy provisions.**

...

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2) b. of this section does not apply ~~to:~~to policies issued to eligible individuals under G.S. 58-68-60.

~~(1) Policies issued to eligible individuals under G.S. 58-68-60.~~

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

SECTION 5. G.S. 58-50-150(b) reads as rewritten:

"**§ 58-50-150. North Carolina Small Employer Health Reinsurance Pool.**

...

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take~~

~~place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ five members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Four of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

SECTION 6. G.S. 58-54-45(a) reads as rewritten:

"**§ 58-54-45. By reason of disability.**

(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

SECTION 7. G.S. 58-3-100(c) reads as rewritten:

"**§ 58-3-100. Insurance company licensing provisions.**

...

(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of a life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and

every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

SECTION 8. G.S. 58-50-61(a) is amended by adding the following new subdivision to read:

"**§ 58-50-61. Utilization review.**

(a) Definitions. – As used in this section, in G.S. 58-50-62, and in Part 4 of this Article, the term:

...

(2a) 'Certificate of coverage' includes a policy of insurance issued to an individual person or a franchise policy issued pursuant to G.S. 58-51-90.

...."

SECTION 9. Sections 1 through 4 of this act become effective January 1, 2006, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

HOUSE BILL 737:
Health Insurance Changes.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 27, 2005
Introduced by:	Reps. Holliman, Wright	**Summary by:**	Tim Hovis
Version:	Second Edition		Committee Counsel

SUMMARY: *House Bill 737 makes numerous substantive and technical changes to laws governing the regulation of insurance including:*

- *Amends G.S. 58-51-80, which defines group accident and health insurance, to require that association premium rates for accident and health insurance be actuarially sound and that associations be rated as a single group when the coverage provided is not employer-based.*
- *Amends G.S. 58-51-95 to limit an insurer's ability to use an individual's or a dependent of the individual's claims experience when developing the individual's renewal rates on individual health insurance policies.*
- *Amends G.S. 58-65-60, 58-67-8, and 58-51-80 to exempt a sole proprietor from the full-time basis or the 30 hour workweek requirements to be eligible for large group health coverage like the proprietor's full-time employees.*
- *Amends G.S. 58-51-30 governing policies covering newborn infants, foster children and adopted children to replace the reference to a definition of a health benefit plan with a different, broader statutory reference.*
- *Clarifies that statutory limitations on the definition of pre-existing conditions and the period of exclusion do apply to limited health, supplemental health, and specified disease policies, but that portability or credit for prior creditable coverage does not.*
- *Amend G.S. 58-50-150(b) to reduce the size of the Small Employer Health Reinsurance Pool Board from 9 to 5 members.*
- *Amends 58-54-45 governing the issuance of Medicare Supplement Plans by reason of disability to require an insurer to allow persons retroactively enrolled in Medicare Part due to a retroactive eligibility decision by the Social Security Administration the same six-month open enrollment period for Medicare Supplemental Plans as a person enrolled in Medicare Part B without a retroactive effective date of coverage.*
- *Amends G.S. 58-3-100 to include a beneficiary in the definition of a claimant.*
- *Amends G.S. 58-50-61 governing grievance and appeals to include a "policy of insurance" to clarify that these statutes apply to individual coverage and not just group coverage.*
- *Eliminates superfluous language in G.S. 58-3-230 relating to provider credentialing.*
- *Addresses 'standard external review' procedures, requiring the insurer or its designee utilization review organization to provide the covered person or their authorized representative with a copy of, "...the documents and any information considered in making the noncertification appeal decision..."*

- *Requires the insurer or its designee utilization review organization to provide the covered person or their authorized representative with a copy of, "...all documents and information considered in making the noncertification appeal decision..." when the request is part of an 'expedited external review'.*
- *Clarifies that the three-day time frame for the Commissioner to complete an expedited external review, is three business days.*
- *Clarifies that the time frame for deciding whether to uphold or reverse a noncertification decision is four business days after the date of receipt of a request for an expedited external review.*

EFFECTIVE DATE: Sections 1 through 4 of the Proposed Committee Substitute for House Bill 737 would become effective January 1, 2006. Sections 9 through 12 of the Proposed Committee Substitute become effective October 1, 2005 and apply to policies or certificates issued on or after that date. The remainder of the act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 737*

Committee Substitute Favorable 4/20/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H737-CSRG-26 [v.1]

6/27/2005 1:46:55 PM

Short Title: Health Insurance Changes.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED, LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS FOR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO FIVE; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; AMEND THE UTILIZATION REVIEW LAWS TO CLARIFY THAT SUCH LAWS PLAINLY APPLY TO INDIVIDUAL INSURANCE COVERAGE AS WELL AS GROUP COVERAGE, TO REMOVE FROM THE UNIFORM

CREDENTIALING STATUTE AN UNNECESSARY PROVISION; ENSURE THAT COVERED PERSONS RECEIVING EXTERNAL REVIEW KNOW WHAT INFORMATION THEIR INSURER PROVIDES TO THE EXTERNAL REVIEW ORGANIZATION PERFORMING THE REVIEW; AND ELIMINATE EXTERNAL REVIEW OUTSIDE OF NORMAL BUSINESS HOURS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsection to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including physical and mental illnesses).

(3) Claims experience.
(4) Duration from issue.
(5) Receipt of health care.
(6) Medical history.
(7) Genetic information."

SECTION 2.(a) G.S. 58-65-60 is amended by adding the following new subsection to read:

"§ 58-65-60. Subscribers' contracts; required and prohibited provisions.

...

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(b) G.S. 58-67-85 is amended by adding the following new subsection to read:

"§ 58-67-85. Master group contracts, filing requirement; required and prohibited provisions.

...

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(c) G.S. 58-51-80(c) reads as rewritten:

"§ 58-51-80. Group accident and health insurance defined.

...

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. With the exception of disability income insurance, employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a

large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 3. G.S. 58-51-30(b) reads as rewritten:

"**§ 58-51-30. Policies to cover newborn infants, foster children, and adopted children.**

...

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

SECTION 4.(a) G.S. 58-51-15(a)(2) reads as rewritten:

"**§ 58-51-15. Accident and health policy provisions.**

(a) Required Provisions. – Except as provided in subsection (c) of this section each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this subsection in the substance of the words that appear in this section. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

...

(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy provision may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars ($5,000) or more for any one sickness or injury; disability income policies affording benefits of one hundred dollars ($100.00) or more per month for not less than 12 months; and franchise policies. Other policies to which this section applies must delete the words "except fraudulent misstatements."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of G.S. 58-51-15(b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE."

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 4.(b) G.S. 58-51-15(h) reads as rewritten:

"**§ 58-51-15. Accident and health policy provisions.**

...

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2) b. of this section does not apply ~~to:~~to policies issued to eligible individuals under G.S. 58-68-60.

~~(1) Policies issued to eligible individuals under G.S. 58-68-60.~~

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

SECTION 5. G.S. 58-50-150(b) reads as rewritten:

"**§ 58-50-150. North Carolina Small Employer Health Reinsurance Pool.**

...

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ five members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Four of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

SECTION 6. G.S. 58-54-45(a) reads as rewritten:

"**§ 58-54-45. By reason of disability.**

(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

SECTION 7. G.S. 58-3-100(c) reads as rewritten:

"**§ 58-3-100. Insurance company licensing provisions.**

...

(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of a life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

SECTION 8. G.S. 58-50-61(a) is amended by adding the following new subdivision to read:

"**§ 58-50-61. Utilization review.**

(a) Definitions. – As used in this section, in G.S. 58-50-62, and in Part 4 of this Article, the term:

...

(2a) 'Certificate of coverage' includes a policy of insurance issued to an individual person or a franchise policy issued pursuant to G.S. 58-51-90.

...."

SECTION 9. G.S. 58-3-230(a) reads as rewritten:

"**§ 58-3-230. Uniform provider credentialing.**

(a) An insurer that provides a health benefit plan and that credentials providers for its networks shall maintain a process to assess and verify the qualifications of a licensed health care ~~practitioner, or applicant for licensure as a health care practitioner,~~ practitioner within 60 days of receipt of a completed provider credentialing application form approved by the Commissioner. When a health care practitioner joins a practice that is under contract with an insurer to participate in a health benefit plan, the effective date of the health care practitioner's participation in the health benefit plan network shall be the date the insurer approves the practitioner's credentialing application."

SECTION 10.(a) G.S. 58-50-80(b)(4) reads as rewritten:

"**§ 58-50-80. Standard external review.**

...

(b) Upon receipt of a request for an external review under subsection (a) of this section, the Commissioner shall, within 10 business days, complete all of the following:

...

(4) Notify the insurer in writing whether the request for external review has been accepted. If the request has been accepted, the notice shall direct the insurer or its designee utilization review organization to provide to the assigned ~~organization,~~organization and to the covered person or authorized representative who made the request for external

review on behalf of the covered person, within seven days of receipt of the notice, the documents and any information considered in making the noncertification appeal decision or the second-level grievance review decision."

SECTION 10.(b) G.S. 58-50-82(c) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(c) As soon as possible, but within the same day of receiving notice under subdivision (b)(2) of this section that the request has been assigned to a review organization, the insurer or its designee utilization review organization shall provide or transmit all documents and information considered in making the noncertification appeal decision or the second-level grievance review decision to the assigned review organization electronically or by telephone or facsimile or any other available expeditious method. A copy of the same information shall be sent by the same means or other expeditious means to the covered person or the covered person's representative who made the request for expedited external review."

SECTION 11. The first sentence of G.S. 58-50-82(b) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:".

SECTION 12. G.S. 58-50-82(e) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(e) As expeditiously as the covered person's medical condition or circumstances require, but not more than four business days after the date of receipt of the request for an expedited external review, the assigned organization shall make a decision to uphold or reverse the noncertification, noncertification appeal decision, or second-level grievance review decision and notify the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner of the decision. In reaching a decision, the assigned organization is not bound by any decisions or conclusions reached during the insurer's utilization review process or internal grievance process under G.S. 58-50-61 and G.S. 58-50-62."

SECTION 13. Sections 1 through 4 of this act become effective January 1, 2006, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

HOUSE BILL 734*
Committee Substitute Favorable 5/2/05

Short Title: Improve Managed Care Statutes.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE UNIFORM CREDENTIALING STATUTE AN UNNECESSARY PROVISION; ENSURE THAT COVERED PERSONS RECEIVING EXTERNAL REVIEW KNOW WHAT INFORMATION THEIR INSURER PROVIDES TO THE EXTERNAL REVIEW ORGANIZATION PERFORMING THE REVIEW; AND ELIMINATE EXTERNAL REVIEW OUTSIDE OF NORMAL BUSINESS HOURS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-230(a) reads as rewritten:

"**§ 58-3-230. Uniform provider credentialing.**

(a) An insurer that provides a health benefit plan and that credentials providers for its networks shall maintain a process to assess and verify the qualifications of a licensed health care ~~practitioner, or applicant for licensure as a health care practitioner,~~ provider within 60 days of receipt of a completed provider credentialing application form approved by the Commissioner. When a health care practitioner joins a practice that is under contract with an insurer to participate in a health benefit plan, the effective date of the health care practitioner's participation in the health benefit plan network shall be the date the insurer approves the practitioner's credentialing application."

SECTION 2.(a) G.S. 58-50-80(b)(4) reads as rewritten:

"**§ 58-50-80. Standard external review.**

...

(b) Upon receipt of a request for an external review under subsection (a) of this section, the Commissioner shall, within 10 business days, complete all of the following:

...

(4) Notify the insurer in writing whether the request for external review has been accepted. If the request has been accepted, the notice shall direct the insurer or its designee utilization review organization to provide to the assigned ~~organization,~~organization and to the covered person or authorized representative who made the request for external

review on behalf of the covered person, within seven days of receipt of the notice, the documents and any information considered in making the noncertification appeal decision or the second-level grievance review decision."

SECTION 2.(b) G.S. 58-50-82(c) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(c) As soon as possible, but within the same day of receiving notice under subdivision (b)(2) of this section that the request has been assigned to a review organization, the insurer or its designee utilization review organization shall provide or transmit all documents and information considered in making the noncertification appeal decision or the second-level grievance review decision to the assigned review organization electronically or by telephone or facsimile or any other available expeditious method. A copy of the same information shall be sent by the same means or other expeditious means to the covered person or the covered person's representative who made the request for expedited external review."

SECTION 3. The first sentence of G.S. 58-50-82(b) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:".

SECTION 4. G.S. 58-50-82(e) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(e) As expeditiously as the covered person's medical condition or circumstances require, but not more than four business days after the date of receipt of the request for an expedited external review, the assigned organization shall make a decision to uphold or reverse the noncertification, noncertification appeal decision, or second-level grievance review decision and notify the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner of the decision. In reaching a decision, the assigned organization is not bound by any decisions or conclusions reached during the insurer's utilization review process or internal grievance process under G.S. 58-50-61 and G.S. 58-50-62."

SECTION 5. This act becomes effective October 1, 2005, and applies to policies or certificates issued or renewed on or after that date.

HOUSE BILL 734:
Navassa Zoning Jurisdiction

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 30, 2005
Introduced by:	Reps. Holliman, Wright	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition H734-PCS70528-LB-79		Committee Co-Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 734 would transfer the planning jurisdiction over a portion of the Town of Navassa that was acquired through a satellite annexation in 2003 to Brunswick County until June 30, 2010.***

CURRENT LAW: By virtue of the annexation in 2003, the Town of Navassa has planning jurisdiction over the property that was annexed into the town in 2003.

BILL ANALYSIS: House Bill 734 would divest the Town of Navassa of planning and zoning jurisdiction over the property annexed by the town through a satellite annexation in 2003 and restore that authority to Brunswick County. Planning and zoning jurisdiction would be restored to the town on June 30, 2010.

EFFECTIVE DATE: The bill becomes effective when Brunswick County adopts an ordinance to apply planning and zoning jurisdiction by the county to this property. The act expires June 30, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 734*

Committee Substitute Favorable 5/2/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H734-PCS70528-LB-79

Short Title: Navassa Zoning Jurisidiction. (Local)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO DIVEST PLANNING JURISDICTION OVER CERTAIN PROPERTY FROM THE TOWN OF NAVASSA AND VEST IT IN THE COUNTY OF BRUNSWICK.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the Session Laws of 1977, being the Charter of the Town of Navassa, is amended by adding a new section to read:

"Sec. 6.1. Notwithstanding any other provisions of this Charter or the provisions of general law, the provisions of Article 19 of Chapter 160A of the General Statutes do not apply to the following described property, and jurisdiction under Article 18 of Chapter 153A of the General Statutes is vested in the County of Brunswick as if the area was not in the corporate limits of the Town of Navassa:

That property annexed by Annexation Ordinance No. 03-001 of the Town of Navassa, adopted October 9, 2003."

SECTION 2. This act becomes effective when the County of Brunswick has adopted in accordance with Article 18 of Chapter 153A of the General Statutes such ordinances as are necessary under that Article. This act expires June 30, 2010, but the Town of Navassa may, on or after January 1, 2010, adopt in accordance with Article 19 of Chapter 160A of the General Statutes such ordinances as are necessary under that Article, to become effective July 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 737*

Committee Substitute Favorable 4/20/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H737-PCS10376-RG-26

Short Title: Health Insurance Changes.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED, LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS FOR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO FIVE; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; AMEND THE UTILIZATION REVIEW LAWS TO CLARIFY THAT SUCH LAWS PLAINLY APPLY TO INDIVIDUAL INSURANCE COVERAGE AS WELL AS GROUP COVERAGE; TO REMOVE FROM THE UNIFORM

CREDENTIALING STATUTE AN UNNECESSARY PROVISION; ENSURE THAT COVERED PERSONS RECEIVING EXTERNAL REVIEW KNOW WHAT INFORMATION THEIR INSURER PROVIDES TO THE EXTERNAL REVIEW ORGANIZATION PERFORMING THE REVIEW; AND ELIMINATE EXTERNAL REVIEW OUTSIDE OF NORMAL BUSINESS HOURS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsection to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including physical and mental illnesses).

(3) Claims experience.
(4) Duration from issue.
(5) Receipt of health care.
(6) Medical history.
(7) Genetic information."

SECTION 2.(a) G.S. 58-65-60 is amended by adding the following new subsection to read:

"§ 58-65-60. Subscribers' contracts; required and prohibited provisions.

...

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(b) G.S. 58-67-85 is amended by adding the following new subsection to read:

"§ 58-67-85. Master group contracts, filing requirement; required and prohibited provisions.

...

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(c) G.S. 58-51-80(c) reads as rewritten:

"§ 58-51-80. Group accident and health insurance defined.

...

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. With the exception of disability income insurance, employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a

large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 3. G.S. 58-51-30(b) reads as rewritten:

"**§ 58-51-30. Policies to cover newborn infants, foster children, and adopted children.**

...

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167~~,G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

SECTION 4.(a) G.S. 58-51-15(a)(2) reads as rewritten:

"**§ 58-51-15. Accident and health policy provisions.**

(a) Required Provisions. – Except as provided in subsection (c) of this section each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this subsection in the substance of the words that appear in this section. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

...

(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy provision may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars ($5,000) or more for any one sickness or injury; disability income policies affording benefits of one hundred dollars ($100.00) or more per month for not less than 12 months; and franchise policies. Other policies to which this section applies must delete the words "except fraudulent misstatements."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of G.S. 58-51-15(b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE."

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 4.(b) G.S. 58-51-15(h) reads as rewritten:

"**§ 58-51-15. Accident and health policy provisions.**

...

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~to policies issued to eligible individuals under G.S. 58-68-60.

~~(1) Policies issued to eligible individuals under G.S. 58-68-60.~~

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

SECTION 5. G.S. 58-50-150(b) reads as rewritten:

"**§ 58-50-150. North Carolina Small Employer Health Reinsurance Pool.**

...

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ five members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Four of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

SECTION 6. G.S. 58-54-45(a) reads as rewritten:

"**§ 58-54-45. By reason of disability.**

(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

SECTION 7. G.S. 58-3-100(c) reads as rewritten:

"**§ 58-3-100. Insurance company licensing provisions.**

...

(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of a life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

SECTION 8. G.S. 58-50-61(a) is amended by adding the following new subdivision to read:

"**§ 58-50-61. Utilization review.**

(a) Definitions. – As used in this section, in G.S. 58-50-62, and in Part 4 of this Article, the term:

...

(2a) 'Certificate of coverage' includes a policy of insurance issued to an individual person or a franchise policy issued pursuant to G.S. 58-51-90.

...."

SECTION 9. G.S. 58-3-230(a) reads as rewritten:

"**§ 58-3-230. Uniform provider credentialing.**

(a) An insurer that provides a health benefit plan and that credentials providers for its networks shall maintain a process to assess and verify the qualifications of a licensed health care ~~practitioner, or applicant for licensure as a health care practitioner,~~ practitioner within 60 days of receipt of a completed provider credentialing application form approved by the Commissioner. When a health care practitioner joins a practice that is under contract with an insurer to participate in a health benefit plan, the effective date of the health care practitioner's participation in the health benefit plan network shall be the date the insurer approves the practitioner's credentialing application."

SECTION 10.(a) G.S. 58-50-80(b)(4) reads as rewritten:

"**§ 58-50-80. Standard external review.**

...

(b) Upon receipt of a request for an external review under subsection (a) of this section, the Commissioner shall, within 10 business days, complete all of the following:

...

(4) Notify the insurer in writing whether the request for external review has been accepted. If the request has been accepted, the notice shall direct the insurer or its designee utilization review organization to provide to the assigned ~~organization,~~organization and to the covered person or authorized representative who made the request for external

review on behalf of the covered person, within seven days of receipt of the notice, the documents and any information considered in making the noncertification appeal decision or the second-level grievance review decision."

SECTION 10.(b) G.S. 58-50-82(c) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(c) As soon as possible, but within the same day of receiving notice under subdivision (b)(2) of this section that the request has been assigned to a review organization, the insurer or its designee utilization review organization shall provide or transmit all documents and information considered in making the noncertification appeal decision or the second-level grievance review decision to the assigned review organization electronically or by telephone or facsimile or any other available expeditious method. A copy of the same information shall be sent by the same means or other expeditious means to the covered person or the covered person's representative who made the request for expedited external review."

SECTION 11. The first sentence of G.S. 58-50-82(b) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:".

SECTION 12. G.S. 58-50-82(e) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

...

(e) As expeditiously as the covered person's medical condition or circumstances require, but not more than four business days after the date of receipt of the request for an expedited external review, the assigned organization shall make a decision to uphold or reverse the noncertification, noncertification appeal decision, or second-level grievance review decision and notify the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner of the decision. In reaching a decision, the assigned organization is not bound by any decisions or conclusions reached during the insurer's utilization review process or internal grievance process under G.S. 58-50-61 and G.S. 58-50-62."

SECTION 13. Sections 1 through 4 of this act become effective January 1, 2006, and apply to policies or certificates issued or renewed on or after that date. Sections 9 through 12 of this act become effective October 1, 2005, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 653*

Committee Substitute Favorable and Engrossed 6/2/05

Short Title: Credit Insurance Changes.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE CREDIT INSURANCE LAWS TO DEFINE "CRITICAL PERIOD COVERAGE"; CLARIFY THE APPROPRIATE REFUND OF PREMIUMS METHOD WHEN A POLICY OR GROUP CERTIFICATE IS TERMINATED PRIOR TO THE SCHEDULED MATURITY DATE OF THE SUBJECT DEBT; ALLOW CREDIT CARD COVERAGE FROM OUT-OF-STATE FINANCIAL INSTITUTIONS; PROVIDE THAT INSURERS MUST ACKNOWLEDGE TO THE CLAIMANT ANY CLAIMS NOT PAID WITHIN THIRTY DAYS; CLARIFY THAT INSURERS CAN REQUIRE REGISTRATION WITH THE STATE UNEMPLOYMENT OFFICE AND PROVISION OF AN OFFICIAL STATE UNEMPLOYMENT OFFICE DECISION LETTER REGARDING THE CLAIM TO QUALIFY FOR CREDIT UNEMPLOYMENT INSURANCE BENEFITS UNDER THE POLICY BUT CANNOT IMPOSE A TIME LIMIT ON THAT REGISTRATION; AND PROVIDE THE COMMISSIONER OF INSURANCE WITH THE AUTHORITY TO ENFORCE THE LAWS GOVERNING CREDIT INSURANCE CONSISTENT WITH THE COMMISSIONER'S GENERAL ENFORCEMENT AUTHORITY AS SET FORTH IN CHAPTER 58 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 2. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be the actuarial method of calculating refunds which produces a refund equal to the original premium multiplied by the ratio of the sum of the remaining insured balances divided by the sum of the original insured balances as of the due date nearest the date of prepayment in full. The refund of premiums for ~~decreasing term credit life insurance in~~

~~transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 3. G.S. 58-57-55 reads as rewritten:

"§ 58-57-55. Issuance of policies.

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. With the exception of credit insurance issued in accordance with G.S. 58-57-105, all ~~All~~ policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 4. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgment shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgment shall include one of the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim."

SECTION 5. G.S. 58-57-110 reads as rewritten:

"§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive ~~months;~~ months.
(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or ~~lockout;~~ lockout.

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal misconduct.

(4) Eligibility for benefits may be based upon registration with the State unemployment office but shall not be limited by any provision requiring registration within a specified time. An insurer may require the insured to provide a copy of the official State unemployment office decision letter regarding the claim for State unemployment benefits in order to qualify for benefits. The official State unemployment office decision letter may only be used to deny a claim for benefits under the credit unemployment coverage if the letter cites a reason listed in G.S. 58-57-110(a)(3).

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage."

SECTION 6. Article 67 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-57-71. Enforcement and penalties.**

(a) The Commissioner may, after notice and opportunity for a hearing, impose civil penalties or petition for restitution under G.S. 58-2-70, revoke, suspend, or restrict the license of any insurer if:

(1) The insurer fails or refuses to comply with any law, order, or rule applicable to the insurer.

(2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.

(3) The insurer has published or made to the Department or to the public any false statement or report.

(4) The insurer or any of the insurer's officers, directors, employees, or other representatives refuse to submit to any examination authorized by law or refuse to perform any legal obligation in relation to an examination.

(5) The insurer is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any suspension, revocation, or refusal to renew an insurer's license under this section may also be made applicable to the license or registration of any individual regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section.

(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgment of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim. With respect to a claim under an accident, health, or disability policy, if the acknowledgment sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgment includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report.

(d) If a foreign insurance company's license is suspended or revoked, the Commissioner shall cause written notification of the suspension or revocation to be given to all of the company's agents in this State. Until the Commissioner restores the company's license, the company shall not write any new business in this State.

(e) The Commissioner may, after considering the standards under G.S. 58-30-60(b), restrict an insurer's license by prohibiting or limiting the kind or amount of insurance written by that insurer. For a foreign insurer, this restriction relates to the insurer's business conducted in this State. The Commissioner shall remove any restriction under this subsection once the Commissioner determines that the operations of the insurer are no longer hazardous to the public or the insurer's policyholders or creditors."

SECTION 7. G.S. 58-57-70 and G.S. 58-57-80 are repealed.

SECTION 8. This act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date.

HOUSE BILL 653:
Credit Insurance Changes.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 29, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Tim Hovis*
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 653 amends Article 57 "Regulation of Credit Insurance" of Chapter 58 of the General Statutes by clarifying statutory requirements, codifying Departmental policy and making the Commissioner's authority to impose monetary penalties on credit insurers consistent with the Commissioner's general enforcement authority.***

[As introduced, this bill was identical to S579, as introduced by Sen. Dalton, which is currently in Senate Commerce.]

The bill would become effective January 1, 2006 and apply to policies or certificates issued or renewed on or after that date.

BILL ANALYSIS: House Bill 653 makes technical changes that codify Departmental policy and clarify statutory requirements. **Section 1** adds the definition of "critical period coverage" which reflects the definition presently permitted by the Department. **Section 2** sets an appropriate refund method for decreasing term credit life insurance. **Section 3** allows credit card insurance to be provided through out-of state insurance contracts to account for current market conditions. **Section 4** requires acknowledgment of credit insurance claims not paid within 30 days. Current law does not require this acknowledgment and the changes would make credit insurance uniform with other lines regarding acknowledgment of a claim. **Section 5** allows a requirement of registration with the state unemployment office for involuntary unemployment benefits under a credit unemployment policy and prohibits the placing of a deadline for that registration or qualification for state unemployment benefits to qualify for the insurance benefits. **Section 6** makes the Commissioner's authority to impose monetary penalties on credit insurers consistent with the authority regarding other insurers. Current law only allows the Commissioner to impose a penalty if the company fails to implement an order of the Commissioner. **Section 7** repeals the provision on enforcement and civil and criminal penalties relating to credit insurance (G.S. 58-57-70 and G.S. 58-57-80). These provisions now appear in G.S. 58-57-71 as it appears in Section 6 of this bill. **Section 8** makes the act effective on January 1, 2006 and applies to policies or certificates issued or renewed on or after that date.

*This summary was substantially contributed to by Mr. Shawn Parker and Ms. Kory Goldsmith, Research Division.

H0653e2-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 673*

Committee Substitute Favorable 5/12/05

Short Title: Interstate Insurance Product Reg. Compact.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH NORTH CAROLINA AS A MEMBER OF THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT, TO REQUIRE THE COMMISSIONER OF INSURANCE TO REPORT WHETHER CONTINUED PARTICIPATION BY THIS STATE IN THE COMPACT IS IN THE BEST INTEREST OF THE CITIZENS AND POLICYHOLDERS OF THIS STATE, AND TO PROVIDE A SUNSET FOR PARTICIPATION IN THE COMPACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding the following new Article to read:

"Article 91.

"Interstate Insurance Product Regulation Compact Act.

"**§ 58-91-1. Preamble.**

The Interstate Insurance Product Regulation Compact Act is intended to help states join together to establish an interstate compact to regulate designated insurance products.

Pursuant to terms and conditions of this Article, this State seeks to join with other states and establish the Interstate Insurance Product Regulation Compact and thus become a member of the Interstate Insurance Product Regulation Commission. The Commissioner of Insurance, or the Commissioner's designee, is hereby designated to serve as the representative of this State to the Commission.

"**§ 58-91-5. Purposes.**

The purposes of this Compact are, through means of joint and cooperative action among the compacting states:

(1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products.

(2) To develop uniform standards for insurance products covered under the Compact.
(3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states.
(4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard.
(5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact.
(6) To create the Interstate Insurance Product Regulation Commission.
(7) To perform these and any other related function as may be consistent with the state regulation of the business of insurance.

"**§ 58-91-10. Definitions.**

For purposes of this Article and the Compact:

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.
(2) "Bylaws" means those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.
(3) "Compacting state" means any state which has enacted this Compact legislation and which has not withdrawn or been terminated pursuant to G.S. 58-91-70.
(4) "Commission" means the "Interstate Insurance Product Regulation Commission" established by this Compact.
(5) "Commissioner" means the chief insurance regulatory official of a state, including a commissioner, superintendent, director, or administrator.
(6) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an foreign insurer, its state of entry.
(7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this Article.
(8) "Member" means the person chosen by a compacting state as its representative to the Commission, or that person's designee.
(9) "Noncompacting state" means any state which is not at the time a compacting state.
(10) "Operating procedures" means procedures promulgated by the Commission implementing a rule, uniform standard, or a provision of this Compact.

(11) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an Insurer is authorized to issue.

(12) "Rule" means a statement of general or particular applicability and future effect promulgated by the Commission, including a uniform standard developed pursuant to G.S. 58-91-35, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the compacting states.

(13) "State" means any state, district, or territory of the United States of America.

(14) "Third-party filer" means an entity that submits a product filing to the Commission on behalf of an insurer.

(15) "Uniform standard" means a standard adopted by the Commission for a product line, pursuant to G.S. 58-91-35, and shall include all of the product requirements in aggregate. Each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product, and the form of the product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

"**§ 58-91-15. Establishment of the Commission and venue.**

(a) The compacting states hereby create and establish a joint public agency known as the "Interstate Insurance Product Regulation Commission." Pursuant to G.S. 58-91-20, the Commission shall have the power to develop uniform standards for product lines, receive, and provide prompt review of products filed with the Commission, and give approval to those product filings satisfying applicable uniform standards. It is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and that filing shall be subject to the laws of the state where filed.

(b) The Commission is a body corporate and politic and an instrumentality of the compacting states.

(c) The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

(d) Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located.

"**§ 58-91-20. Powers of the Commission.**

The Commission shall have the following powers:

(1) To promulgate rules, pursuant to G.S. 58-91-35, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this Compact.

(2) To exercise its rule-making authority and establish reasonable uniform standards for products covered under the Compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the Commission. Notwithstanding this subdivision, a compacting state shall have the right to opt out of a uniform standard pursuant to G.S. 58-91-35, to the extent and in the manner provided in this Compact, and any uniform standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the uniform standards established by the Commission for long-term care insurance products.

(3) To receive and review in an expeditious manner products filed with the Commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where the approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the Compact.

(4) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the Commission and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the Commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the Compact.

(5) To exercise its rule-making authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the Commission.

(6) To promulgate operating procedures pursuant to G.S. 58-91-35 which shall be binding in the compacting states to the extent and in the manner provided in this Compact.

(7) To bring and prosecute legal proceedings or actions in its name as the Commission except that the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(9) To establish and maintain offices.

(10) To purchase and maintain insurance and bonds.

(11) To borrow, accept, and contract for services of personnel, including employees of a compacting state.

(12) To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. At all times the Commission shall strive to avoid any appearance of impropriety.

(14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed. At all times the Commission shall strive to avoid any appearance of impropriety.

(15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(16) To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures.

(17) To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.

(18) To provide for dispute resolution among compacting states.

(19) To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this Compact.

(20) To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments.

(21) To establish a budget and make expenditures.

(22) To borrow money.

(23) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their

representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

(24) To provide and receive information from, and to cooperate with, law enforcement agencies.

(25) To adopt and use a corporate seal.

(26) To perform any other functions that may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

"**§ 58-91-25. Organization of the Commission.**

(a) Membership, Voting, and Bylaws. – Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own Commissioner.

Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds of the members vote in favor of the uniform standard.

The Commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including:

(1) Establishing the fiscal year of the Commission.

(2) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee.

(3) Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission.

(4) Providing reasonable procedures for calling and conducting meetings of the Commission that consist of a majority of Commission members, ensuring reasonable advance notice of each meeting and providing for the right of citizens to attend each meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and (ii) votes taken during the meeting.

(5) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the Commission.

(6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Commission.

(7) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees.

(8) Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment or reserving of all of its debts and obligations.

The Commission shall publish its bylaws in a convenient form and file a copy of the bylaws and a copy of any amendment to the bylaws with the appropriate agency or officer in each of the compacting states.

(b) Management Committee, Officers and Personnel. – A Management Committee comprising no more than 14 members shall be established as follows:

(1) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the NAIC for the prior year.

(2) Four members from those compacting states with at least two percent (2%) of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

(3) Four members from those compacting states with less than two percent (2%) of the market, based on the premium volume described above, with one selected from each of the four zone regions of the NAIC as provided in the bylaws.

(b1) The Management Committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(1) Managing the affairs of the Commission in a manner consistent with the bylaws and purposes of the Commission.

(2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard, except that that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the Management Committee.

(3) Overseeing the offices of the Commission.

(4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Commission.

The Commission shall elect annually officers from the Management Committee, with each having the authority and duties specified in the bylaws.

The Management Committee may, subject to the approval of the Commission, appoint or retain an executive director for a period of time, upon the terms and conditions, and for the compensation deemed appropriate by the Commission. The executive director shall serve as secretary to the Commission, but shall not be a member of the Commission. The executive director shall hire and supervise any other staff authorized by the Commission.

(c) Legislative and Advisory Committees. – A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee. The manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the Commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the Management Committee shall consult with and report to the legislative committee.

The Commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

The Commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(d) Corporate Records of the Commission. – The Commission shall maintain its corporate books and records in accordance with the bylaws.

(e) Qualified Immunity, Defense, and Indemnification. – The members, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities except that nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities as long as the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton

misconduct. Nothing in this subsection shall be construed to prohibit that person from retaining his or her own counsel.

The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities as long as the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

"**§ 58-91-30. Meetings; acts of the Commission.**

(a) The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

(b) Each member of the Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Commission. A member shall vote in person or by any means provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(c) The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

"**§ 58-91-35. Rules and operating procedures: rule-making functions of the Commission and opting out of uniform standards.**

(a) Rule-Making Authority. – The Commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this Article, or the powers granted in this Article, then that action by the Commission shall be invalid and have no force and effect.

(b) Rule-Making Procedure. – Rules and operating procedures shall be made pursuant to a rule-making process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a uniform standard, the Commission shall give written notice to the relevant state legislative committee in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The Commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(c) Effective Date and Opt Out of a Uniform Standard. – A uniform standard shall become effective 90 days after its promulgation by the Commission or such later date as the Commission may determine except that a compacting state may opt out of a uniform standard as provided in this Article. "Opt out" shall be defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments to the rules and operating procedures, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(d) Opt Out Procedure. – A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must (i) give written notice to the Commission no later than 10 business days after the uniform standard is promulgated, or at the time the state becomes a compacting state and (ii) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The Commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:

(1) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this Article; and

(2) The presumption that a uniform standard adopted by the Commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this Compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for the opt out in the enacted Compact, and the opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this Compact. The opt out shall be effective at the time of enactment of this Compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(e) Effect of Opt Out. – If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under G.S. 58-91-70 for withdrawals.

(f) Stay of Uniform Standard. – If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the Commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The Commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to 90 days, unless affirmatively extended

by the Commission. A stay shall not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances that warrant a continuance of the stay, including the existence of a legal challenge that prevents the compacting state from opting out. A stay may be terminated by the Commission upon notice that the rule-making process has been terminated.

(g) Not later than 30 days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure. The filing of a petition pursuant to this subsection shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the Commission's authority.

"**§ 58-91-40. Commission records and enforcement.**

(a) The Commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except information and records involving the privacy of individuals and insurers' trade secrets. The Commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(b) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the Commission. Disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement. Except as otherwise expressly provided in this Article, the Commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the Commission shall remain confidential after the information is provided to any commissioner.

(c) The Commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The Commission shall notify any noncomplying compacting state in writing of its noncompliance with Commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in G.S. 58-91-70.

(d) The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise that person's authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the Compact is governed by the following provisions:

(1) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the Commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the Compact except upon a final order of the Commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the Commission.

(2) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the Compact relating to the content of an advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this subdivision does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the Commission's action on the requests.

"**§ 58-91-45. Dispute resolution.**

The Commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more compacting states, or between compacting states and noncompacting states, and the Commission shall promulgate an operating procedure providing for resolution of those disputes.

"**§ 58-91-50. Product filing and approval.**

(a) Insurers and third-party filers seeking to have a product approved by the Commission shall file the product with, and pay applicable filing fees to, the Commission. Nothing in this Article shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and the filing shall be subject to the laws of the states where filed.

(b) The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission rules and operating procedures. Notwithstanding any provision in this Article to the contrary, the Commission shall promulgate rules to establish conditions and procedures under which the Commission will provide public access to product filing information. In establishing rules, the Commission shall consider the interests of the public in having access to the information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(c) Any product approved by the Commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

"**§ 58-91-55. Review of Commission decisions regarding filings.**

(a) Not later than 30 days after the Commission has given notice of a disapproved product or advertisement filed with the Commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate rules to establish procedures for appointing review panels and provide for notice and hearing.

An allegation that the Commission, in disapproving a product or advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with G.S. 58-91-15(d).

(b) The Commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (a) of this section.

"**§ 58-91-60. Finance.**

(a) The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.

(b) The Commission shall collect a filing fee from each insurer and third-party filer filing a product with the Commission to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

(c) The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in G.S. 58-91-35.

(d) The Commission shall be exempt from all taxation in and by the compacting states.

(e) The Commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(f) The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the Commission, shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an annual report to the Governor and legislature of the compacting states, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential, and those materials may be shared with the commissioner of any compacting state upon request except that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(g) No compacting state shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

"**§ 58-91-65. Compacting states; effective date; amendment.**

(a) Any State is eligible to become a compacting state.

(b) The Compact shall become effective and binding upon legislative enactment of the Compact into law by two compacting states except that the Commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of, products filed with the Commission that satisfy applicable uniform standards only after 26 states are compacting states or, alternatively, by states representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the Compact into law by that state.

(c) Amendments to the Compact may be proposed by the Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Commission and the compacting states unless and until all compacting states enact the amendment into law.

"**§ 58-91-70. Withdrawal; default; termination.**

(a) Withdrawal. – Once effective, the Compact shall continue in force and remain binding upon each and every compacting state though a compacting state may withdraw from the Compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the Compact into law.

The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in this subsection.

The commissioner of the withdrawing state shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the withdrawing state.

The Commission shall notify the other compacting states of the introduction of such legislation within 10 days after its receipt of the notice.

The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the withdrawing state. The Commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the Compact.

(b) Default. – If the Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this Compact on the defaulting state shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in Commission rules. The Commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Commission, the defaulting state shall be terminated from the Compact and all rights, privileges, and benefits conferred by this Compact shall be terminated from the effective date of termination.

Product approvals by the Commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (a) of this section.

Reinstatement following termination of any compacting state requires a reenactment of the Compact.

(c) Dissolution of Compact. – The Compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the Compact to one compacting state.

Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

"**§ 58-91-75. Severability; construction.**

(a) The provisions of this Compact shall be severable; and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

(b) The provisions of this Compact shall be liberally construed to effectuate its purposes.

"**§ 58-91-80. Binding effect of Compact; other laws.**

(a) Other Laws. – Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in subsection (b) of this section.

For any product approved or certified to the Commission, the rules, uniform standards, and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the Commission's authority, any rule, uniform standard, or other requirement of the Commission that governs the content of the advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of

the advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

All insurance products filed with individual states shall be subject to the laws of those states.

(b) Binding Effect of This Compact. – All lawful actions of the Commission, including all rules and operating procedures promulgated by the Commission, are binding upon the compacting states.

All agreements between the Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the compacting states, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this Compact becomes effective."

SECTION 2. The Commissioner may submit interim reports to the General Assembly as deemed appropriate by the Commissioner on the effectiveness of the State's participation in the Compact. No later than January 1, 2009, the Commissioner shall submit a final report to the General Assembly on the effectiveness of the State's participation in the Compact. The report may include consideration of any issues deemed relevant by the Commissioner to the State's participation in the Compact and may include recommended legislative proposals related to the Compact. The report shall include the Commissioner's recommendation to the General Assembly as to whether the State's continued participation in the Compact is in the best interest of the citizens of this State.

SECTION 3. This act becomes effective October 1, 2005, and expires October 1, 2009.

HOUSE BILL 673:
Interstate Insurance Product Reg. Compact.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 29, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Tim Hovis
Version:	Second Edition		Committee Counsel

SUMMARY: ***This bill adopts the National Association of Insurance Commissioners' (NAIC) Interstate Insurance Product Regulation Compact, a multi-state agreement that creates a national authority called the Interstate Insurance Product Regulation Commission. The commission, which includes one member from each participating state, has a broad range of powers, including rule-making authority. It adopts national uniform standards for certain products and receives, reviews, and provides appropriate regulatory approval for product filings and advertisements from insurers. The commission's decisions have the force and effect of law and are binding on the participating states.***

The compact, which applies to individual and group annuity, life insurance, disability income, and long-term care insurance products, is effective after two states enact it. The commission cannot adopt uniform standards or review or approve product filings until 26 states or, alternatively, states with more than 40% of covered insurance products' premium volume enact the compact. Two-thirds of the participating states must approve a uniform standard before it takes effect.

The act becomes effective October 1, 2005 and sunsets October 1, 2009.

[As introduced, this bill was identical to S578, as introduced by Sen. Dalton, which is currently in Senate Commerce.]

CURRENT LAW: There is no current law covering this matter. Except to the extent pre-empted by federal law, North Carolina has sole regulatory authority over individual and group annuity, life insurance, disability income, and long-term care insurance products offered by insurers licensed in this State.

BILL ANALYSIS: **Section 1** of House Bill 673 enacts a new Article 91 in Chapter 58, which would establish North Carolina as a member of the Interstate Insurance Product Regulation Compact. The legislation is patterned after a model act adopted by the NAIC in 2003.

Among other things, insurers wanting a product approved would have to send the filing and applicable filing fee to the commission. Any product the commission approves may be sold or issued in any participating state in which the insurer is licensed to do business. The compact does not prohibit an insurer from instead filing the product with the Insurance Department, in which case the filing will be subject to North Carolina's laws. The Insurance Department continues to oversee market conduct activities of state-licensed insurers.

A state can opt-out of any uniform standard through legislation or regulation if it determines the standard does not provide reasonable protections for its citizens. It can also withdraw from the compact by repealing the statute that adopted it.

Section 2 directs the Commissioner of Insurance to submit interim reports to the General Assembly on the effectiveness of the State's participation in the Compact. The Commissioner must submit an final report on this matter no later than January 1, 2009, and may include recommendations on legislative related to the Compact, and must include a recommendation regarding whether the State should remain a member of the Compact.

EFFECTIVE DATE: The act would become effective October 1, 2005, but would sunset October 1, 2009.

BACKGROUND: The NAIC adopted the Interstate Insurance Product Regulation Compact in July 2003. It is a multi-state agreement to create a streamlined system of product regulation that (1) allows insurers to market certain insurance products more quickly nationally and (2) reduces the number of product variations that a company needs to meet state-specific requirements. According to information made available at the National Association of Insurance Commissioners (NAIC) website, fourteen states have adopted the compact: Colorado, Hawaii, Iowa, Idaho, Kansas, Maine, Massachusetts, Nebraska New Hampshire, Rhode Island, Utah, Virginia, Washington, and West Virginia.

The U. S. Constitution requires that "No state shall, without the consent of Congress, enter into any Agreement or Compact with another State. " However, the Supreme Court ruled that consent is required only when the compact would increase the political power and influence of the compacting states and encroach upon federal authority (*Virginia v. Tennessee* 13 S. Ct. 728 (1893)). Because the compact performs a function already reserved to the states, the NAIC holds that it neither increases the states' power and influence nor encroaches on federal authority and therefore does not need Congressional consent.

H0673e2-SMRC
H0673e2-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1236

Committee Substitute Favorable 5/25/05

Short Title: Insurance Bd. of Governors Membership. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE ALLIANCE OF AMERICAN INSURERS AND NATIONAL ASSOCIATION OF INDEPENDENT INSURERS WITH THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA AND ONE INSURER FROM THE INDUSTRY AT LARGE SELECTED BY THE INSURER COMPANY MEMBERS OF THE BOARD AS TRADE ASSOCIATION MEMBERS WHICH MUST BE REPRESENTED ON THE BOARD OF GOVERNORS OF THE NORTH CAROLINA REINSURANCE FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-37-35(d) reads as rewritten:

"(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of 12 members having one vote each from the classifications specified in this subsection and the Commissioner, who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following trade associations: the American Insurance Association (or its successors), ~~the Alliance of American Insurers (or its successors), the National Association of Independent Insurers (or its successors),~~ the Property Casualty Insurers Association of America (or its successors), one from stock insurers not affiliated with those trade associations, one from nonstock insurers not affiliated with those trade associations, and one from the industry at large, regardless of trade affiliation. The at-large insurer shall be selected by the insurer company members of the Board. ~~all other stock insurers not affiliated with those trade associations, and all other nonstock insurers not affiliated with those trade associations.~~ The Commissioner shall appoint two members of the Board who are Facility insurance company members domiciled in this State. The Commissioner shall appoint five members of the Board who

shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The ~~initial~~ term of office of the Board members shall be ~~two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve~~ three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the classifications specified in this subsection until the vacancies are filled in accordance with this Article. The Board of Governors of the Facility shall also have as nonvoting members two persons who are not employed by or affiliated with any insurance company or the Department and who are appointed by the Governor to serve at the Governor's pleasure."

SECTION 2. This act becomes effective October 1, 2005.

HOUSE BILL 1236:
Insurance Bd. of Governors Membership

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 29, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Tim Hovis*
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1236 would replace two insurance trade associations (the Alliance of American Insurers and the National Association of Independent Insurers) represented on the Board of Governors of the North Carolina Motor Vehicle Reinsurance Facility. These associations have been consolidated and will be represented on the Board by one member selected by the Property Casualty Insurers Association of America. In addition, the bill provides that one member shall be selected from the industry at large, regardless of trade affiliation.***

CURRENT LAW: The Board of Governors of the North Carolina Motor Vehicle Reinsurance Facility consists of 12 members and the Commissioner, who serves on the Board ex officio and without vote. Five of the members of the Board are to be selected by the member insurers and are intended to be fairly representative of the industry.[1] One member is selected from each of the following trade associations:

- The American Insurance Association;
- The Alliance of American Insurers;
- The National Association of Independent Insurers;
- All other stock insurers not affiliated with those trade associations; and
- All other nonstock insurers not affiliated with those trade associations.

The Commissioner appoints the remaining members of the Board – two are Facility insurance company members domiciled in the State; and five are fire and casualty insurance agents licensed in the State and actively engaged in writing motor vehicle insurance in the State.

BILL ANALYSIS: House Bill 1236 would replace representatives of two insurance trade associations (the Alliance of American Insurers and the National Association of Independent Insurers) currently serving on the Board of Governors of the North Carolina Motor Vehicle Reinsurance Facility. These associations have been consolidated and will be represented on the Board by one member selected by the Property Casualty Insurers Association of America. The bill provides that one additional member will be selected from the industry at large, regardless of trade affiliation.

EFFECTIVE DATE: The act would be effective October 1, 2005.

BACKGROUND: The North Carolina Motor Vehicle Reinsurance Facility is a nonprofit unincorporated legal entity consisting of all insurers licensed to write and engaged in writing motor vehicle insurance or any component of motor vehicle insurance in the State[2]. The Board of Governors is charged with the power and administrative responsibility for operating the Facility, which is, in turn, directed to assure the availability of motor vehicle insurance to any "eligible risk"

*This summary was substantially contributed to by Ben Popkin, Staff Attorney, Research Division.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H .D

HOUSE BILL 1236

Committee Substitute Favorable 5/25/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1236-CSRG-31 [v.3]

6/29/2005 3:37:50 PM

Short Title: Insurance Bd. of Governors Membership. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE ALLIANCE OF AMERICAN INSURERS AND NATIONAL ASSOCIATION OF INDEPENDENT INSURERS WITH THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA AND ONE INSURER FROM THE INDUSTRY AT LARGE SELECTED BY THE INSURER COMPANY MEMBERS OF THE BOARD AS TRADE ASSOCIATION MEMBERS WHICH MUST BE REPRESENTED ON THE BOARD OF GOVERNORS OF THE NORTH CAROLINA REINSURANCE FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-37-35(d) reads as rewritten:

"(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of 12 members having one vote each from the classifications specified in this subsection and the Commissioner, who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the ~~following trade associations:~~ following: the American Insurance Association (or its successors), ~~the Alliance of American Insurers (or its successors), the National Association of Independent Insurers (or its successors),~~ the Property Casualty Insurers Association of America (or its successors), stock insurers not affiliated with those trade associations, nonstock insurers not affiliated with those trade associations, and the industry at large regardless of trade affiliation. The at-large insurer shall be selected by the insurer company members of the Board. ~~all other stock insurers not affiliated with those trade associations, and all other nonstock insurers not affiliated with those trade associations.~~ The Commissioner shall appoint two members

of the Board who are Facility insurance company members domiciled in this State. The Commissioner shall appoint five members of the Board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The ~~initial~~ term of office of the Board members shall be ~~two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve~~ three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the classifications specified in this subsection until the vacancies are filled in accordance with this Article. The Board of Governors of the Facility shall also have as nonvoting members two persons who are not employed by or affiliated with any insurance company or the Department and who are appointed by the Governor to serve at the Governor's pleasure."

SECTION 2. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1236

Committee Substitute Favorable 5/25/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1236-PCS80435-RG-31

Short Title: Insurance Bd. of Governors Membership. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE ALLIANCE OF AMERICAN INSURERS AND NATIONAL ASSOCIATION OF INDEPENDENT INSURERS WITH THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA AND ONE INSURER FROM THE INDUSTRY AT LARGE SELECTED BY THE INSURER COMPANY MEMBERS OF THE BOARD AS TRADE ASSOCIATION MEMBERS WHICH MUST BE REPRESENTED ON THE BOARD OF GOVERNORS OF THE NORTH CAROLINA REINSURANCE FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-37-35(d) reads as rewritten:

"(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of 12 members having one vote each from the classifications specified in this subsection and the Commissioner, who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the ~~following trade associations:~~ following: the American Insurance Association (or its successors), ~~the Alliance of American Insurers (or its successors), the National Association of Independent Insurers (or its successors),~~ the Property Casualty Insurers Association of America (or its successors), stock insurers not affiliated with those trade associations, nonstock insurers not affiliated with those trade associations, and the industry at large regardless of trade affiliation. The at-large insurer shall be selected by the insurer company members of the Board. ~~all other stock insurers not affiliated with those trade associations, and all other nonstock insurers not affiliated with those trade associations.~~ The Commissioner shall appoint two members

of the Board who are Facility insurance company members domiciled in this State. The Commissioner shall appoint five members of the Board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The ~~initial~~ term of office of the Board members shall be ~~two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve~~ three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the classifications specified in this subsection until the vacancies are filled in accordance with this Article. The Board of Governors of the Facility shall also have as nonvoting members two persons who are not employed by or affiliated with any insurance company or the Department and who are appointed by the Governor to serve at the Governor's pleasure."

SECTION 2. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 735
Committee Substitute Favorable 4/27/05

Short Title: Accident & Health Insur./Rate Stabilization.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANNUAL FILING AND ACTUARIAL CERTIFICATION OF RATES FOR INSURERS PROVIDING INDIVIDUAL ACCIDENT AND HEALTH INSURANCE BENEFITS AND TO BETTER PROTECT CONSUMERS FROM THE HARMFUL IMPACT OF BLOCKS OF BUSINESS BEING CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-95(f) reads as rewritten:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(f) An insurer may ~~increase~~ revise rates chargeable on policies subject to this section, other than noncancellable policies, with the approval of the Commissioner if the Commissioner finds that the revised rates are not excessive, not inadequate, and not unfairly discriminatory; and exhibit a reasonable relationship to the benefits provided by the policies. The approved rates shall be guaranteed by the insurer, as to the policyholders affected by the rates, for a period of not less than 12 months; or as an alternative to the insurer giving the guarantee, the approved rates may be applicable to all policyholders at one time if the insurer chooses to apply for that relief with respect to those policies no more frequently than once in any 12-month period. The rates shall be applicable to all policies of the same type; provided that no rate ~~increase~~ revision may become effective for any policy unless the insurer has given the policyholder written notice of the rate revision 45 days before the effective date of the revision. The policyholder must then pay the revised rate in order to continue the policy in force. The Commissioner may adopt reasonable rules, after notice and hearing, to require the submission of supporting data and such information as the Commissioner considers necessary to determine whether the rate revisions meet these standards. In adopting the rules under this subsection, the Commissioner may require identification of the types of rating methodologies used by filers and may also address issue age or attained age

rating, or both; policy reserves used in rating; and other recognized actuarial principles of the NAIC, the American Academy of Actuaries, and the Society of Actuaries."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsections to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(g) Every policy that is subject to this section and that provides individual accident and health insurance benefits to a resident of this State shall return to policyholders benefits that are reasonable in relation to the premium charged. The Commissioner may adopt rules or utilize existing rules to establish minimum standards for loss ratios of policies on the basis of incurred claims experience and earned premiums in accordance with accepted actuarial principles and practices to assure that the benefits are reasonable in relation to the premium charged. Every insurer providing policies in this State subject to this section shall not less than annually file for approval its rates, rating schedules, and supporting documentation to demonstrate compliance with the applicable loss ratio standards of this State as adopted by the Commissioner. All filings of rates and rating schedules shall comply with the standards adopted by the Commissioner. The filing shall include a certification by an individual who is either a Fellow or an Associate of the Society of Actuaries or a Member of the American Academy of Actuaries that the rates are not excessive, not inadequate, and not unfairly discriminatory; and that the rates exhibit a reasonable relationship to the benefits provided by the policy. Nothing in this subsection shall require an insurer to provide certification with respect to a previous rate period, or to require an insurer to reduce properly filed and approved rates before the end of a rate period. This subsection does not apply to any long-term care policy issued in this State on or after February 1, 2003, and noncancellable accident and health insurance.

(h) For any long-term care policy issued in this State on or after February 1, 2003, an insurer shall on or before March 15 of each year:

(1) Provide to the Commissioner an actuarial certification listing all of its long-term care policy forms available for sale in this State as of December 31 of the prior year, stating that the current premium rate schedule for each form is sufficient to cover anticipated costs under moderately adverse experience and stating that the premium rate schedule is reasonably expected to be sustainable over the file of the form with no future premium increases anticipated.

(2) For any policy form for which the statement in subdivision (1) of this subsection cannot be made or is qualified, submit a plan of corrective action to the Commissioner for approval.

(i) For purposes of this section, accident and health insurance means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or

other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof."

SECTION 2. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-275. Closure of a block of business.**

(a) An insurer that determines to create a closed block of business in this State shall:

(1) Within five business days of making the determination to close a block of business, notify the Commissioner in writing of the insurer's decision to cease sales of the policy and of the expected impact on future premiums.

(2) Within 20 days of making the determination to close a block of business, inform each agent and broker selling the product of the decision and cease all marketing activities regarding that business.

(3) Within 30 days, notify all policyholders of the determination and of its expected impact on future premiums. Notice shall comply with any rules adopted pursuant to subsection (b) of this section.

(b) The Commissioner may adopt rules to carry out the purposes and provisions of this section, including rules establishing the language, content, format, and methods of distribution of the notices required by this section.

(c) As used in this section, the term:

(1) 'Accident and health insurance' means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof.

(2) 'Block of business' means a particular policy form or contract of individual accident and health insurance issued by an insurer.

(3) 'Closed block of business' means a block of business for which an insurer ceases to actively market, sell, and issue new contracts under a particular policy form in this State.

(4) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(d) This section does not apply when an insurer makes a decision to discontinue a particular policy form or contract of accident and health insurance coverage subject to

Article 68 of this Chapter, cancels or nonrenews the coverage, and offers replacement coverage pursuant to G.S. 58-68-65(c)(1)."

SECTION 3. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(g),(h), (i).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 4. This act becomes effective July 1, 2006.

HOUSE BILL 735:
Accident & Health Insur./Rate Stabilization.-AB

BILL ANALYSIS

Committee:	Senate.Commerce	**Date:**	June 29, 2005
Introduced by:	Reps. Holliman, Wright	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: The Proposed Committee Substitute to House Bill 735 makes changes to the statutes governing accident and health insurance benefits and includes a new provision governing the closing of blocks of business

[As introduced, this bill was identical to S848, as introduced by Sen. Malone, which is currently in Senate Commerce.]

Section 1 the Proposed Committee Substitute make the following changes:

- *Requires all accident and health insurance policies (except long-tem care policies) to provide benefits that are reasonable to the premium charged.*
- *Authorizes the Commissioner to adopt rules establishing minimum standards for loss ratios on the basis incurred claims experience and earned premiums; Require all accident and health insurers (except long–term care insurers) to annually file rates, rating schedules, and supporting documentation, including actuarial certification, for the Commissioner's approval to demonstrate compliance with these loss ratios.*
- *Requires long-term care insurers to provide an actuarial certification listing all long-term care policy forms in the State stating that the current premium rate schedule is sufficient to cover anticipated costs; Submit a plan of corrective action for the Commissioner's approval if the certification cannot be made or is qualified.*

This section would apply to hospital, medical, and dental service corporations, including Blue Cross and Blue Shield and Delta Dental.

Section 2 of the Proposed Committee Substitute would add a new section to Chapter 58 governing the closing of blocks of business by accident and health insurers. This section would require an insurer to provide the following notices a minimum of sixty days prior to the closure date:

- *Notify the Commissioner of making a determination to close a block of business.*
- *Notify each agent and broker selling of the determination. The insurer must also cease all marketing activities of the product.*
- *Notify all policyholders of the determination and the expected impact of the closing on future premiums.*

Under the bill, a closed block of business is defined as "a block of business for which an insurer ceases to actively market, sell, and issue new contracts under a particular policy form in the State."

EFFECTIVE DATE: House Bill 735 becomes effective July 1, 2006.

H0735Proposed Committee Substitute-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 735

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H735-CSRG-32 [v.2]

6/29/2005 4:56:50 PM

Short Title: Accident & Health Insur./Rate Stabilization.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANNUAL FILING AND ACTUARIAL CERTIFICATION OF RATES FOR INSURERS PROVIDING INDIVIDUAL ACCIDENT AND HEALTH INSURANCE BENEFITS AND TO BETTER PROTECT CONSUMERS FROM THE HARMFUL IMPACT OF BLOCKS OF BUSINESS BEING CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-95(f) reads as rewritten:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(f) An insurer may ~~increase~~ revise rates chargeable on policies subject to this section, other than noncancellable policies, with the approval of the Commissioner if the Commissioner finds that the revised rates are not excessive, not inadequate, and not unfairly discriminatory; and exhibit a reasonable relationship to the benefits provided by the policies. The approved rates shall be guaranteed by the insurer, as to the policyholders affected by the rates, for a period of not less than 12 months; or as an alternative to the insurer giving the guarantee, the approved rates may be applicable to all policyholders at one time if the insurer chooses to apply for that relief with respect to those policies no more frequently than once in any 12-month period. The rates shall be applicable to all policies of the same type; provided that no rate ~~increase~~ revision may become effective for any policy unless the insurer has given the policyholder written notice of the rate revision 45 days before the effective date of the revision. The policyholder must then pay the revised rate in order to continue the policy in force. The Commissioner may adopt reasonable rules, after notice and hearing, to require the submission of supporting data and such information as the Commissioner considers necessary to determine whether the rate revisions meet these standards. In adopting the

rules under this subsection, the Commissioner may require identification of the types of rating methodologies used by filers and may also address issue age or attained age rating, or both; policy reserves used in rating; and other recognized actuarial principles of the NAIC, the American Academy of Actuaries, and the Society of Actuaries."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsections to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(g) Every policy that is subject to this section and that provides individual accident and health insurance benefits to a resident of this State shall return to policyholders benefits that are reasonable in relation to the premium charged. The Commissioner may adopt rules or utilize existing rules to establish minimum standards for loss ratios of policies on the basis of incurred claims experience and earned premiums in accordance with accepted actuarial principles and practices to assure that the benefits are reasonable in relation to the premium charged. Every insurer providing policies in this State subject to this section shall not less than annually file for approval its rates, rating schedules, and supporting documentation to demonstrate compliance with the applicable loss ratio standards of this State as adopted by the Commissioner. All filings of rates and rating schedules shall comply with the standards adopted by the Commissioner. The filing shall include a certification by an individual who is either a Fellow or an Associate of the Society of Actuaries or a Member of the American Academy of Actuaries that the rates are not excessive, not inadequate, and not unfairly discriminatory; and that the rates exhibit a reasonable relationship to the benefits provided by the policy. Nothing in this subsection shall require an insurer to provide certification with respect to a previous rate period, or to require an insurer to reduce properly filed and approved rates before the end of a rate period. This subsection does not apply to any long-term care policy issued in this State on or after February 1, 2003, and noncancellable accident and health insurance.

(h) For any long-term care policy issued in this State on or after February 1, 2003, an insurer shall on or before March 15 of each year:

(1) Provide to the Commissioner an actuarial certification listing all of its long-term care policy forms available for sale in this State as of December 31 of the prior year, stating that the current premium rate schedule for each form is sufficient to cover anticipated costs under moderately adverse experience and stating that the premium rate schedule is reasonably expected to be sustainable over the file of the form with no future premium increases anticipated.

(2) For any policy form for which the statement in subdivision (1) of this subsection cannot be made or is qualified, submit a plan of corrective action to the Commissioner for approval.

(i) For purposes of this section, accident and health insurance means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare

supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof."

SECTION 2. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-275. Closure of a block of business.**

(a) An insurer that determines to create a closed block of business in this State shall provide the following notices a minimum of 60 days prior to the closure date:

(1) Notify the Commissioner in writing of the insurer's decision to cease sales of the particular policy form or forms and of the expected impact on future premiums.

(2) Inform each agent and broker selling the product of the decision and cease all marketing activities regarding that particular policy form or forms.

(3) Notify all policyholders of the determination and of its expected impact on future premiums. Notice shall comply with any rules adopted pursuant to subsection (b) of this section.

(b) The Commissioner may adopt rules to carry out the purposes and provisions of this section, including rules establishing the language, content, format, and methods of distribution of the notices required by this section.

(c) As used in this section, the term:

(1) 'Accident and health insurance' means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof.

(2) 'Block of business' means a particular policy form or contract of individual accident and health insurance issued by an insurer.

(3) 'Closed block of business' means a block of business for which an insurer ceases to actively market, sell, and issue new contracts under a particular policy form in this State.

(4) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(5) 'Closure date' means the effective date that no new insureds will be issued coverage of the particular policy form(s).

(6) 'Policyholders' includes those applicants for the particular policy form that is being closed and for which the policy is not yet issued.

(d) This section does not apply when an insurer makes a decision to discontinue a particular policy form or contract of accident and health insurance coverage subject to Article 68 of this Chapter, cancels or nonrenews the coverage, and offers replacement coverage pursuant to G.S. 58-68-65(c)(1)."

SECTION 3. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(g),(h), (i).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 4. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 735

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H735-PCS50471-RG-32

Short Title: Accident & Health Insur./Rate Stabilization.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANNUAL FILING AND ACTUARIAL CERTIFICATION OF RATES FOR INSURERS PROVIDING INDIVIDUAL ACCIDENT AND HEALTH INSURANCE BENEFITS AND TO BETTER PROTECT CONSUMERS FROM THE HARMFUL IMPACT OF BLOCKS OF BUSINESS BEING CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-95(f) reads as rewritten:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(f) An insurer may ~~increase~~ revise rates chargeable on policies subject to this section, other than noncancellable policies, with the approval of the Commissioner if the Commissioner finds that the revised rates are not excessive, not inadequate, and not unfairly discriminatory; and exhibit a reasonable relationship to the benefits provided by the policies. The approved rates shall be guaranteed by the insurer, as to the policyholders affected by the rates, for a period of not less than 12 months; or as an alternative to the insurer giving the guarantee, the approved rates may be applicable to all policyholders at one time if the insurer chooses to apply for that relief with respect to those policies no more frequently than once in any 12-month period. The rates shall be applicable to all policies of the same type; provided that no rate ~~increase~~ revision may become effective for any policy unless the insurer has given the policyholder written notice of the rate revision 45 days before the effective date of the revision. The policyholder must then pay the revised rate in order to continue the policy in force. The Commissioner may adopt reasonable rules, after notice and hearing, to require the submission of supporting data and such information as the Commissioner considers necessary to determine whether the rate revisions meet these standards. In adopting the

rules under this subsection, the Commissioner may require identification of the types of rating methodologies used by filers and may also address issue age or attained age rating, or both; policy reserves used in rating; and other recognized actuarial principles of the NAIC, the American Academy of Actuaries, and the Society of Actuaries."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsections to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(g) Every policy that is subject to this section and that provides individual accident and health insurance benefits to a resident of this State shall return to policyholders benefits that are reasonable in relation to the premium charged. The Commissioner may adopt rules or utilize existing rules to establish minimum standards for loss ratios of policies on the basis of incurred claims experience and earned premiums in accordance with accepted actuarial principles and practices to assure that the benefits are reasonable in relation to the premium charged. Every insurer providing policies in this State subject to this section shall not less than annually file for approval its rates, rating schedules, and supporting documentation to demonstrate compliance with the applicable loss ratio standards of this State as adopted by the Commissioner. All filings of rates and rating schedules shall comply with the standards adopted by the Commissioner. The filing shall include a certification by an individual who is either a Fellow or an Associate of the Society of Actuaries or a Member of the American Academy of Actuaries that the rates are not excessive, not inadequate, and not unfairly discriminatory; and that the rates exhibit a reasonable relationship to the benefits provided by the policy. Nothing in this subsection shall require an insurer to provide certification with respect to a previous rate period or to require an insurer to reduce properly filed and approved rates before the end of a rate period. This subsection does not apply to any long-term care policy issued in this State on or after February 1, 2003, and noncancellable accident and health insurance.

(h) For any long-term care policy issued in this State on or after February 1, 2003, an insurer shall on or before March 15 of each year:

(1) Provide to the Commissioner an actuarial certification listing all of its long-term care policy forms available for sale in this State as of December 31 of the prior year, stating that the current premium rate schedule for each form is sufficient to cover anticipated costs under moderately adverse experience and stating that the premium rate schedule is reasonably expected to be sustainable over the file of the form with no future premium increases anticipated.

(2) For any policy form for which the statement in subdivision (1) of this subsection cannot be made or is qualified, submit a plan of corrective action to the Commissioner for approval.

(i) For purposes of this section, accident and health insurance means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare

supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof."

SECTION 2. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-275. Closure of a block of business.**

(a) An insurer that determines to create a closed block of business in this State shall provide the following notices a minimum of 60 days prior to the closure date:

(1) Notify the Commissioner in writing of the insurer's decision to cease sales of the particular policy form or forms and of the expected impact on future premiums.

(2) Inform each agent and broker selling the product of the decision and cease all marketing activities regarding that particular policy form or forms.

(3) Notify all policyholders of the determination and of its expected impact on future premiums. Notice shall comply with any rules adopted pursuant to subsection (b) of this section.

(b) The Commissioner may adopt rules to carry out the purposes and provisions of this section, including rules establishing the language, content, format, and methods of distribution of the notices required by this section.

(c) As used in this section, the term:

(1) 'Accident and health insurance' means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof.

(2) 'Block of business' means a particular policy form or contract of individual accident and health insurance issued by an insurer.

(3) 'Closed block of business' means a block of business for which an insurer ceases to actively market, sell, and issue new contracts under a particular policy form in this State.

(4) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(5) 'Closure date' means the effective date that no new insureds will be issued coverage of the particular policy form(s).

(6) 'Policyholders' includes those applicants for the particular policy form that is being closed and for which the policy is not yet issued.

(d) This section does not apply when an insurer makes a decision to discontinue a particular policy form or contract of accident and health insurance coverage subject to Article 68 of this Chapter, cancels or nonrenews the coverage, and offers replacement coverage pursuant to G.S. 58-68-65(c)(1)."

SECTION 3. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(g),(h), (i).	Approval by Commissioner of forms, classification, and rates; hearings; exceptions."

SECTION 4. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 255

Short Title:	Finance Law Changes 1.	(Public)
Sponsors:	Senator Kerr.	
Referred to:	Rules and Operations of the Senate.	

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO STATE AND LOCAL FINANCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. This act amends State and local finance laws.

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

SENATE BILL 255:
Small Employer Health Insurance

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 28, 2005
Introduced by:	Sen. Kerr	**Summary by:**	Walker Reagan, Committee Counsel and Ben Popkin, Staff Attorney
Version:	PCS to First Edition S255-PCS75338-LN-51		

SUMMARY: The Proposed Committee Substitute for Senate Bill 255 would enact the "Healthy NC" program to provide affordable health insurance coverage for small employers, self-employed individuals and uninsured workers. The 15 largest health insurers in the State by market share would be required to participate in the program, offering a standardized, streamlined benefit package to eligible individuals and small employers. Reduced premiums would be facilitated by the State reimbursing insurers for 90% of the cost of claims between $15,000 and $75,000 from one of two dedicated stop-loss funds (one for small employers, one for qualifying individuals).

BILL ANALYSIS: The new Part 5A of Article 50 of Chapter 58 of the General Statutes would create the Healthy NC Program. The 15 largest health insurers in the State by market share would be required to participate in the program, offering a standardized, streamlined benefit package to eligible individuals and small employers (those with 50 or fewer employees). Healthy NC premiums would be set by each individual insurer, upon approval of the Commissioner of Insurance. The State would reimburse insurers for 90% of the amount of claims falling between $15,000 and $75,000 in a calendar year. Reimbursement would be made from funds appropriated by the State into one of two dedicated funds – the Small Employer Stop Loss Fund and the Qualifying Individual Stop Loss Fund.

Eligibility – Those eligible to participate in Healthy NC would include the following[1]:

- Employers:
  - With up to 50 employees (at least 75% of whom are covered under the program);
  - Whose business is located in North Carolina;
  - That contribute at least 50% of the premium cost; and
  - That have not provided group coverage for employees within the last 12 months.
- Self-Employed Individuals/Independent Contractors:
  - Who reside in North Carolina;
  - Who are not currently insured and have not been for the past 12 months;
  - Who are not eligible for employer-sponsored group coverage; and
  - Who are not eligible for Medicare.
- Uninsured Individuals:
  - Who reside in North Carolina;
  - Who are employed; and
  - Who have no group coverage and are not eligible for employer-sponsored group coverage

Benefits and Limitations – A standardized, streamlined, benefit package would be required to be provided by all participating insurers. Pre-existing condition limitations would correspond with those already in place with existing health policies (12 month pre-existing condition waiting period). Annual coverage limits would be $100,000 for individuals and $200,000 aggregate for families and dependents.

[1] Proposed G.S. 58-50-159, 160 and 161.

Covered services would include the following[2]:

- Hospital care, outpatient care, physician services, maternity services, preventive care, diagnostic and laboratory services, emergency care, therapeutic care and blood and blood product coverage.

Deductibles and co-payments would be as follows[3]:

- Inpatient hospital services - $500 co-payment, per hospitalization;
- Surgical services – co-payment of the lesser of either 20% of the cost of the service or $200;
- Outpatient surgical facility charges - $75 co-payment;
- Emergency services - $50 co-payment, waived if hospitalized following ER visit;
- Pre-natal care - $10 co-payment;
- All other services - $20.00 co-payment.

Stop Loss Funds – The bill would create two separate funds, the Small Employer Stop Loss Fund and the Qualifying Individual Stop Loss Fund, from which monies would be paid to reimburse claims falling within a 'claims corridor' of $15,000 and $75,000 per insured person per calendar year. Participating insurers would submit requests for reimbursement of claims paid in a calendar year no later than April 1 of the following year. Insurers would be reimbursed for 90% of the cost of the claims paid with the 'claims corridor' from monies held in the appropriate stop loss fund. In the event that claims exceed available stop loss funds, then insurers would be reimbursed on a pro-rata basis with the available funds.

Excess funds in the stop loss funds would be carried forward to the next calendar year. The Commissioner would be authorized to suspend enrollment into Healthy NC if annual expenditures were anticipated to exceed available funds. The Commissioner would be authorized to use not more than $50,000 of the stop loss funds to develop and implement outreach, education and enrollment strategies targeted to small employers and working adults without health insurance.

Independent Evaluation of Healthy NC Program – The bill would require that an annual evaluation of the Program be conducted annually by an independent contractor, paid from fund monies. The evaluation would address at least the following: program enrollment; relationship between premium levels and program enrollment; analysis of the Program cost experience; and surveys of covered members, participating insurers, and qualifying small employers, individuals, and self-employed persons. The Commissioner would be directed to report on the status of the Program and to make recommendations for legislative action to the 2008 Regular Session.

EFFECTIVE DATE: The Act would become effective only if the 2005 General Assembly appropriates funds to the Reserve for Healthy NC. If funds are appropriated, then the Act would be effective on January 1, 2007.

BACKGROUND: Affordable health insurance coverage is the number one concern of small businesses in the State. North Carolina currently has the highest total premiums for small employers in the South Atlantic region. Approaches to encourage the provision of low cost insurance have been tried in this and other states around the country with limited success. One notable exception to this is the Healthy NY program implemented in that state in 1999. That program relied on an innovative reinsurance scheme that, combined with mandatory participation by all HMOs located in the state and provision of a streamlined benefit package, resulted in premiums at significantly lower cost than those available in the private market (from 23% to 69% lower premiums).

S0255e1-SMRU-PCS75338-LN-51

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[2] Proposed G.S. 58-50-163(a).
[3] Proposed G.S. 58-50-163(b).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 255
PROPOSED COMMITTEE SUBSTITUTE S255-PCS75338-LN-51

Short Title: Small Employer Health Insurance. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE "HEALTHY NC" PROGRAM TO FACILITATE THE AVAILABILITY OF AFFORDABLE ACCIDENT AND HEALTH INSURANCE COVERAGE TO SMALL EMPLOYERS, SELF-EMPLOYED INDIVIDUALS, AND UNINSURED WORKERS.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 1, 2007, Article 50 of Chapter 58 of the General Statutes is amended by adding the following new Part to read:

"Part 5A. Healthy NC Program.

"**§ 58-50-157. Definitions.**

The following definitions apply in this Part:

(1) 'Claims corridor'. – Claims paid on behalf of a covered member in a given calendar year in excess of fifteen thousand dollars ($15,000) and less than seventy-five thousand dollars ($75,000).

(2) 'Claims threshold'. – The aggregate amount that a participating insurer must pay out as claims paid before reaching the applicable claims corridor and before becoming eligible for reimbursement from the Fund on behalf of a covered member in a given calendar year.

(3) 'Community rated'. – A method used to develop carrier premiums which spreads financial risk across a large population and allows adjustments for age, gender, family composition, and geographic areas.

(4) 'Dependent'. – The spouse or child of a covered individual. 'Dependent child' includes a child who is under the age of 19 or is a full-time student under the age of 23.

(5) 'Health benefit plan'. – Defined in G.S. 58-3-167.

(6) 'Insurer'. – An insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, and a health maintenance organization organized under Article 67 of this Chapter.
(7) 'Part-time worker'. – Any person employed less than 30 hours weekly.
(8) 'Participating insurer'. – An insurer that offers a qualifying health insurance contract. For purposes of this Part, 'participating insurer' includes the insurer's brokers, agents, producers, or third-party administrators, as applicable.
(9) 'Premium'. – Insurance premiums or other fees charged for qualifying health insurance contracts including the costs of benefits paid or reimbursements made to or on behalf of persons covered by the contract.
(10) 'Program'. – The Healthy NC Program established under this Part.
(11) 'Qualifying health insurance contract'. – Either a group health insurance contract approved by the Commissioner and purchased under the Program by a qualifying small employer, or an individual health insurance contract approved by the Commissioner and purchased under the Program by a self-employed individual or an uninsured employed individual, or both a group or individual contract, as the context requires.
(12) 'Qualifying individual'. – An uninsured employed individual, or a self-employed individual that qualifies to purchase a qualifying individual health insurance contract under the Program.
(13) 'Qualifying small employer'. – An employer that qualifies to purchase a qualifying group health insurance contract under the Program.
(14) 'Stop Loss Fund' or 'Fund'. – Either the Small Employer Stop Loss Fund, or the Qualifying Individual Stop Loss Fund, or both, as the context requires.

"**§ 58-50-158. Standardized health insurance contracts for qualifying small employers and individuals.**

(a) Every insurer that offers individual health benefit plans, group health benefit plans, or both, and that is among the 15 insurers with the highest health benefit plan market share in this State, as reported in the Total Accident and Health Business Market Share Report for the current year, shall offer qualifying group health insurance contracts and qualifying individual health insurance contracts in accordance with this Part. Coverage offered shall include dependent coverage. If at the time of offering coverage, an insurer does not participate in both the individual and group health insurance markets in this State, then the insurer may choose to offer a qualifying health insurance contract in only the health insurance market that the insurer serves.

(b) Notwithstanding any other provision of this Chapter, the contracts issued pursuant to this Part by participating insurers shall provide only network plan benefits, except for emergency care or where services are not available through a plan provider. As used in this Part, `network plan' has the meaning applied under G.S. 58-68-25.

(c) All coverage under a qualifying health insurance contract is subject to a preexisting condition limitation in accordance with G.S. 58-51-15. The underwriting of the contracts may not utilize exclusionary riders on specific conditions or health-related issues to limit coverage on an individual based upon the individual's health status.

(d) A qualifying small employer that elects to provide coverage offered under the Program shall make coverage under the qualifying group health insurance contract available to dependents of employees. A dependent who is enrolled in Medicare is ineligible for coverage under this Part unless coverage is required by federal law. Dependents of an employee who is enrolled in Medicare will be eligible for dependent coverage provided the dependent is not also enrolled in Medicare. A qualifying individual may elect to include coverage for the qualifying individual's dependents under the qualifying individual health insurance contract.

(e) A benefit plan under a qualifying health insurance contract is subject to applicable continuation, conversion, and renewability requirements of Articles 53 and 68 of this Chapter, and COBRA, as defined under G.S. 58-68-25.

(f) A qualifying health insurance contract shall provide a 31-day grace period for payment of premiums.

(g) Rates under qualifying health insurance contracts may be increased as authorized under G.S. 58-51-95 and applicable rules regarding rate revision requests.

(h) Qualifying health insurance contracts, and the rates under the contracts, are subject to the prior approval of the Commissioner. The Commissioner shall review all health insurance contracts and rates for Program contracts submitted by participating insurers, and, if the contracts and rates comply with this Part, approve the contracts and rates.

"**§ 58-50-159. Eligibility for small employers.**

(a) In order to be eligible to purchase or renew a qualifying health insurance contract under this Part, an applicant shall be a small employer:

(1) That employs not more than 50 eligible employees, at least seventy-five percent (75%) of which participate in group health insurance coverage through the Program.

(2) That has not provided group health insurance coverage covering its employees during the 12-month period prior to application for a qualifying group health insurance contract under the Program. Small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage (insured or self-insured) on behalf of their employees and contributed an average of not less than fifty dollars ($50.00) per employee per month;

(3) Whose place of business is located in this State; and

(4) That contributes on behalf of participating employees at least fifty percent (50%) of the premium for the qualifying health insurance contract. The employer premium contribution must be the same percentage for all covered employees.

(b) An employer shall cease to be a qualifying small employer if any health insurance that provides benefits on an expense-reimbursed or prepaid basis covering the employer's employees, other than qualifying group health insurance purchased pursuant to this Part, is purchased by or on behalf of the employer or otherwise takes effect subsequent to the purchase of qualifying group health insurance under the Program.

(c) Qualifying small employers are not required to offer coverage to part-time workers who work less than the required number of work hours to qualify as employees. However, if part-time workers are included as eligible employees for the purpose of meeting the eligibility requirements of this section, then coverage must be offered to part-time workers.

(d) Qualifying small employers may impose waiting periods that newly hired workers must satisfy in advance of obtaining coverage under the qualifying group health insurance contract. The waiting period shall not exceed 90 days from the date of hire and must be the same for all newly hired workers. Employees shall be added to the group not later than 90 days after the first day of employment.

(e) The 12-month period set forth in subdivision (a)(2) of this section may be adjusted by the Commissioner from 12 months to 18 months if the Commissioner determines that the 12-month period is insufficient to prevent inappropriate substitution of other health insurance contracts for qualifying individual health insurance contracts.

(f) If an employee of a qualifying small employer has been covered as a dependent under another health benefit plan, or has had individual coverage, the prior coverage shall be credited against the 12-month waiting period on pre-existing conditions under the Program.

(g) As used in this Part, the term 'eligible employee' means an employee who works for a qualifying small employer on a full-time basis with a normal work week of 30 or more hours. 'Eligible employee' does not include employees who work on a temporary or substitute basis. In applying minimum participation requirements to a small employer, the insurer shall not consider employees or dependents who have qualifying existing coverage in determining whether an applicable participation level is met. "Qualifying existing coverage" means benefits or coverage provided under: (i) Medicare, Medicaid, and other government funded programs; or (ii) an employer-based health insurance or health benefit arrangement, including a self-insured plan, that provides benefits similar to or in excess of benefits provided under the Program.

"**§ 58-50-160. Eligibility for self-employed persons.**

(a) As used in this Part, the term "self-employed individual" means an individual or sole proprietor, including an independent contractor, who derives a majority of the individual's income from a trade or business carried on by the individual or sole proprietor which results in taxable income as indicated on IRS form 1040, Schedule C or F, and which generated taxable income in one of the two previous years.

(b) In order to be eligible to purchase or renew a qualifying individual health insurance contract under this Part, an applicant shall be a self-employed individual who is the sole owner and employee of a business and who:

(1) Does not have and has not had health insurance coverage with benefits on an expense-reimbursed or prepaid basis during the 12-month period prior to application for coverage under the Program;

(2) Would not be eligible to obtain health insurance under an employer-provided group health benefits plan. An applicant would be considered eligible for an employer-provided group health benefits plan if the applicant is eligible to participate in an employer-sponsored health benefit plan (insured or self-insured) and the employer contributes toward the cost of the plan or the payment of the premium;

(3) Is a resident of North Carolina. Documentation of residency, which may include a valid North Carolina drivers license or special identification card, must be provided at initial application for a qualifying health insurance contract; and

(4) Is ineligible for Medicare.

(c) The 12-month period set forth in subdivision (b)(1) of this section may be adjusted by the Commissioner from 12 months to 18 months if the Commissioner determines that the 12-month period is insufficient to prevent inappropriate substitution of other health insurance contracts for qualifying individual health insurance contracts.

"**§ 58-50-161. Eligibility for uninsured employed persons.**

(a) In order to be eligible to purchase or renew a qualifying individual health insurance contract under this Part, an applicant shall be an individual who:

(1) Is an employed person but whose employer does not provide group health insurance and has not provided group health insurance with benefits on an expense-reimbursed or prepaid basis covering employees in effect during the 12-month period prior to the individual's application for health insurance under the Program. Applicants qualifying for individual health insurance contracts may meet the employment requirement by demonstrating that the applicant's spouse (residing in the applicant's household) is an employed person;

(2) Does not have health insurance in force or who would not be eligible to obtain health insurance under an employer-provided group health benefits plan. An applicant would be considered eligible for an employer-provided group health benefits plan if the applicant is eligible to participate in an employer-sponsored health benefit plan (insured or self-insured) and the employer contributes toward the cost of the plan or the payment of the premium;

(3) Is a resident of North Carolina. Documentation of residency, which may include a valid North Carolina drivers license or special identification card, must be provided at initial application for a qualifying health insurance contract; and

(4) Is ineligible for Medicare.

(b) Subdivision (a)(1) of this section is not applicable where an individual had health insurance coverage during the previous 12 months, and the coverage was terminated due to:

(1) Loss of employment due to factors other than voluntary separation or change to new employer as described in subdivision (3) of this subsection;

(2) Death of a family member that results in termination of coverage under a health insurance contract under which the individual is covered;

(3) Change to a new employer that does not provide group health insurance with benefits on an expense-reimbursed or prepaid basis;

(4) Change of residence so that no employer-based health insurance with benefits on an expense-reimbursed or prepaid basis is available;

(5) Discontinuation of a group health insurance contract with benefits on an expense-reimbursed or prepaid basis covering the qualifying individual as an employee or dependent;

(6) Expiration of the coverage periods established by Article 53 of this Chapter, the continuation provisions of the Employee Retirement Income Security Act, 29 U.S.C. § 1161, et seq., and the Public Health Service Act, 42 U.S.C. § 300bb-1, et seq., established by the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended;

(7) Legal separation, divorce, or annulment that results in termination of coverage under a health insurance contract under which the individual is covered;or

(8) Loss of eligibility under a group health benefit plan.

(c) The 12-month period set forth in subdivision (a)(1) of this section may be adjusted by the Commissioner from 12 months to 18 months if the Commissioner determines that the 12-month period is insufficient to prevent inappropriate substitution of other health insurance contracts for qualifying individual health insurance contracts.

(d) As used in this Part, 'employed person' means, for purposes of determining eligibility for qualifying individual health insurance contracts, any person employed on a full-time or part-time basis either currently or within the past 12 months for which the employed person received monetary compensation.

"**§ 58-50-162. Enrollment; applications; duties of participating insurers; health plan contact information.**

(a) Applications for qualifying health insurance contracts shall be made directly to the participating insurers. Participating insurers shall accept any standardized application form that may be required by the Commissioner. Participating insurers must accept applications for qualifying group health insurance contracts and qualifying individual health insurance contracts from any qualifying individual and any qualifying small employer at all times throughout the year.

(b) An applicant for a qualifying health insurance contract shall provide to the participating insurer at the time of initial application, and annually thereafter, certification that the applicant meets the requirements of a qualifying small employer or

qualifying individual, as applicable. The applicant shall submit documentation in support of the certification as required by the participating insurer.

(c) In addition to other duties required by this Part, participating insurers shall do the following:

(1) Provide all necessary information and enrollment forms when requested by applicants.

(2) Collect eligibility certifications required under this Part and necessary supporting documentation and be responsible for examination of the certifications and documentation for verification that applicants meet applicable eligibility requirements for initial enrollment and for contract renewals. At least 90 days prior to the annual contract renewal date, the participating insurer shall provide forms necessary for recertification of qualifying health insurance contracts. If the participating insurer determines that a contract will not be renewed or will be terminated based on ineligibility, the participating insurer shall provide not less than 45 days written notice to that effect to the contract holder and any covered employees. The notice shall clearly state the basis for the termination or nonrenewal. The notice shall also include a description of other coverage options available for purchase from the participating insurer.

(3) Unless the Commissioner suspends enrollment in the Program pursuant to G.S. 58-50-165, the participating insurer shall accept and issue coverage for all applicants meeting eligibility criteria. For all applications submitted on or prior to the 20th day of the month, coverage shall be issued on the first day of the month next succeeding the date a complete application has been submitted. For applications submitted after the 20th day of the month, the participating insurer shall issue coverage not later than the first of the month next following the 20th day.

(4) Provide applicants that have failed to demonstrate eligibility with a written notice of denial clearly setting forth the basis for the denial.

(5) Submit monthly enrollment reports to the Commissioner detailing total enrollment in the Program. The reports shall identify the participating insurer's total enrollment in the Program as of the first day of the following month and shall be submitted to the Commissioner not later than the 15th day of the following month.

(6) In the event that the Commissioner suspends enrollment in the Program as provided in G.S. 58-50-165, participating insurers shall notify applicants that enrollment has been suspended and shall maintain a waiting list of applicants to be filled in the order of receipt in the event that enrollment is reactivated

(7) Submit to the Commissioner:

a. The name, address, and telephone number of the participating insurer's contact person assigned to the Program;

b. The address and toll-free telephone number to direct consumer inquiries regarding the Program; and

c. The service area in which the Program will be available.

Participating insurers shall review and revise or update periodically the information required in this subdivision and shall submit the revisions and updates to the Commissioner on a timely basis.

(d) If a group covered under the Program becomes ineligible, coverage under the Program shall be terminated consistent with G.S. 58-68-45(b).

"**§ 58-50-163. Covered services; co-payments and deductibles.**

(a) Except as provided in subsection (d) of this section, covered services under a qualifying group health insurance and a qualifying individual health insurance contract shall include only the following:

(1) Inpatient hospital services consisting of daily room and board, general nursing care, special diets, and miscellaneous hospital services and supplies;

(2) Outpatient hospital services consisting of diagnostic and treatment services;

(3) Physician services consisting of diagnostic and treatment services, consultant and referral services, surgical services (including breast reconstruction surgery after mastectomy), anesthesia services, second surgical opinion, and a second opinion for cancer treatment;

(4) Outpatient surgical facility charges related to a covered surgical procedure;

(5) Preadmission testing;

(6) Maternity care;

(7) Adult preventive health services consisting of mammography screening; cervical cytology screening; periodic physical examinations no more than once every three years; and adult immunizations;

(8) Preventive and primary health care services for dependent children including routine well-child visits and necessary immunizations;

(9) Equipment, supplies, and self-management education for the treatment of diabetes;

(10) Diagnostic X-ray and laboratory services;

(11) Emergency services;

(12) Therapeutic services consisting of radiologic services, chemotherapy and hemodialysis; and

(13) Blood and blood products furnished in connection with surgery or inpatient services.

Except as provided under Article 68 of this Chapter, the health benefit plans developed under this Part are not required to provide coverage that meets the requirements of other provisions of this Chapter that mandate either coverage or the offer of coverage by the type or level of health care services or health care provider.

(b) Benefits provided in the contracts described in subsection (a) of this section shall be subject to the following deductibles, co-payments, and limitations on coverage:

(1) Inpatient hospital services shall have a five-hundred-dollar ($500.00) co-payment for each continuous hospital confinement;

(2) Surgical services shall be subject to a co-payment of the lesser of twenty percent (20%) of the cost of such services or two hundred dollars ($200.00) per occurrence;

(3) Outpatient surgical facility charges shall be subject to a facility co-payment charge of seventy-five dollars ($75.00) per occurrence;

(4) Emergency services shall have a fifty-dollar ($50.00) co-payment. The co-payment must be waived if hospital admission results from the emergency room visit;

(5) All other services shall have a twenty-dollar ($20.00) co-payment with the exception of prenatal care which shall have a ten-dollar ($10.00) co-payment; and

(6) The amount of allowable expenses for individual-only coverage shall not exceed one hundred thousand dollars ($100,000) per contract period. The amount of allowable expenses for family or dependent coverage shall not exceed an aggregate amount of two hundred thousand dollars ($200,000) per contract period.

(c) Except as provided in subsection (d) of this section, a participating insurer must offer the benefit package without change or additional benefits. Qualifying small employers shall be issued the benefit package under a qualifying group health insurance contract. Qualifying individuals shall be issued the benefit package under a qualifying individual health insurance contract.

(d) Beginning January 1, 2008, participating insurers shall offer an additional Program benefit package that includes all of the benefits set forth in subsection (a) of this section plus a prescription drug benefit. The maximum coverage for prescription drugs shall be three thousand dollars ($3,000) per covered individual in a calendar year. Notwithstanding G.S. 58-51-37, the prescription drug benefit shall include:

(1) Prescription drugs obtained at a participating pharmacy. Insurers may provide prescription drugs pursuant to a drug formulary, in which case G.S. 58-3-221 shall apply; and

(2) A one-hundred dollar ($100.00) calendar year deductible per individual. After the deductible is satisfied, each 34-day supply of a prescription drug will be subject to a co-payment. The co-payment will be ten dollars ($10.00) if the drug is generic. The co-payment for a brand-name drug will be twenty dollars ($20.00) plus the difference in cost between the brand-name drug and the equivalent generic drug. If a mail order drug program is utilized, a twenty-dollar ($20.00) co-payment shall be imposed on a 90-day supply of generic prescription drugs. A forty-dollar ($40.00) co-payment plus the difference in cost between the brand-name drug and the equivalent generic drug shall be imposed on a 90-day supply of brand-name prescription drugs. In no event shall the co-payment exceed the cost of the prescribed drug.

Participating insurers must give qualifying small employers and qualifying individuals the option of choosing among the benefit packages. Qualifying small employers must elect to provide the same benefit package to all of their employees participating in the Program. Once enrolled in the Program, any change in the selection of benefit package may occur at the time of annual recertification or at any time the premium rate changes. Participating insurers shall provide notice of the option with any notice of rate change.

(e) Appeal and grievance rights under G.S. 58-60-61 and G.S. 58-50-62 apply to covered benefits under the Program.

"**§ 58-50-164. Premiums.**

Premium rate calculations for qualifying group health insurance contracts and qualifying individual health insurance contracts shall be subject to the following:

(1) Coverage must be community-rated and include rate tiers for individuals, individual and spouse, and at least one other family tier. The rate differences must be based upon the cost differences for the different family units, and the rate tiers must be uniformly applied. The rate tier structure used by a participating insurer for the contracts issued to qualifying small employers and to qualifying individuals must be the same.

(2) If geographic rating areas are utilized, the geographic areas must be reasonable and in a given case may include a single county. The geographic areas utilized must be the same for the contracts issued to qualifying small employers and to qualifying individuals. The Commissioner shall not require the inclusion of any specific geographic region within the proposed community-rated region selected by the participating insurer so long as the participating insurer's proposed regions do not contain configurations designed to avoid or segregate particular areas within a county covered by the participating insurer's adjusted community rates.

(3) Claims experience under contracts issued to qualifying small employers and to qualifying individuals must be pooled for rate-setting purposes. The premium rates for qualifying group health insurance contracts and qualifying individual health insurance contracts must be the same.

"**§ 58-50-165. Stop loss funds for standardized health insurance contracts issued to qualifying small employers and qualifying individuals.**

(a) The Commissioner shall establish funds from which participating insurers may receive reimbursement, to the extent of funds available, for claims paid by the participating insurers. For qualifying group health insurance contracts issued pursuant to this Part, the fund shall be established as the "Small Employer Stop Loss Fund". The Commissioner shall establish a separate and distinct fund from which participating insurers may receive reimbursement, to the extent of funds available, for claims paid by the participating insurers for members covered under qualifying individual health

insurance contracts issued pursuant to this Part. This fund shall be established as the "Qualifying Individual Stop Loss Fund".

(b) For each qualifying health insurance contract eligible for reimbursement from the Fund, participating insurers shall record and aggregate claims paid on a per member basis. Reimbursement from the applicable Fund shall be calculated based on the per member aggregates.

(c) The Small Employer Stop Loss Fund shall operate separately from the Qualifying Individual Stop Loss Fund. Except as specified in subsection (d) of this section with respect to calendar year 2006, the level of stop loss coverage for the qualifying group health insurance contracts and the qualifying individual health insurance contracts need not be the same. The Funds need not be structured or operated in the same manner, except as specified in this section. The monies available for distribution from the Stop Loss Fund may be reallocated between the Small Employer Stop Loss Fund and the Qualifying Individual Stop Loss Fund if the Commissioner determines that the reallocation is warranted due to enrollment trends.

(d) Commencing on January 1, 2008, participating insurers shall be eligible to receive reimbursement for ninety percent (90%) of claims paid within the applicable claims corridor in the preceding calendar year on behalf of each member covered under a standardized contract issued pursuant to this Part. Claims paid for members covered under qualifying group health insurance contracts shall be reimbursable from the Small Employer Stop Loss Fund. Claims paid for members covered under qualifying individual health insurance contracts shall be reimbursable from the Qualifying Individual Stop Loss Fund. The Commissioner shall provide for validation of claims against the Fund, including repayment by insurers for claims erroneously paid.

(e) Claims shall be reported and funds shall be distributed from the Fund on a calendar year basis. Claims shall be eligible for reimbursement only for the calendar year in which the claims are paid. Once claims paid on behalf of a covered member reach or exceed seventy-five thousand dollars ($75,000) in a given calendar year, no further claims paid on behalf of the member in that calendar-year shall be eligible for reimbursement.

(f) Claims paid within a calendar year shall be determined by the date of payment rather than date of service or date the claim was incurred. No participating insurer shall delay or defer payment of a claim solely for the purpose of causing the date of payment to fall into a subsequent calendar year.

(g) Participating insurers shall not be entitled to any reimbursement on behalf of a covered member if the claims paid on behalf of that member in a given calendar year do not, in the aggregate, reach the applicable claims threshold. Additionally, claims paid on behalf of a covered member that exceed the claims corridor in a given calendar year shall not be eligible for reimbursement from the stop loss Funds.

(h) Claims paid shall not include interest paid out by a participating insurer.

(i) Each participating insurer shall submit a request for reimbursement from the Fund on forms prescribed by the Commissioner. Each of the requests for reimbursement shall be submitted not later than April 1st following the end of the calendar year for which the reimbursement requests are being made. The Commissioner may require

participating insurers to submit the claims data in connection with the reimbursement requests as necessary to distribute monies from and oversee the operation of the Fund. The Commissioner shall require data to be reported separately for qualifying group health insurance contracts and qualifying individual health insurance contracts issued pursuant to this Part.

(j) Claims paid that are not submitted for reimbursement prior to April 1st of the calendar year following the year in which the claims are paid shall not be eligible for reimbursement from the Fund and shall not be credited as paid claims in any year for the purpose of determining whether the claims threshold has been reached. If the Commissioner determines that the claims data submitted in conjunction with a reimbursement request is insufficient to make a reimbursement determination, the Commissioner shall make a request for clarification of the data or for the submission of additional data. Participating insurers shall comply with all such requests within 15 business days of receiving the request. If a participating insurer fails to comply with a request for clarification within 15 business days of receiving the request, the Commissioner may deem any affected claims ineligible for reimbursement.

(k) For each Fund, the Commissioner shall calculate the total claims reimbursement amount for all participating insurers for the calendar year for which claims are being reported.

(1) In the event that the total amount requested for reimbursement for a calendar year exceeds funds available for distribution for claims paid during that same calendar year, the Commissioner shall provide for the pro-rata distribution of the available funds. Each participating insurer shall be eligible to receive only such proportionate amount of the available funds as each participating insurer's total eligible claims paid bears to the total eligible claims paid by all participating insurers.

(2) In the event that funds available for distribution for claims paid by all participating insurers during a calendar year exceeds the total amount requested for reimbursement by all participating insurers during that same calendar year, any excess funds shall be carried forward and made available for distribution in the next calendar year. The excess funds shall be in addition to the monies appropriated to the Fund in the next calendar year.

(l) Upon the request of the Commissioner, each participating insurer shall be required to furnish such data as the Commissioner deems necessary to oversee the operation of the Fund. The data shall be furnished in a form prescribed by the Commissioner. Each participating insurer shall provide the Commissioner with monthly reports of the total enrollment under the qualifying group health insurance contracts and the qualifying individual health insurance contracts issued pursuant to this Part. The reports shall be in a form prescribed by the Commissioner.

(m) The Commissioner shall separately estimate the per-member annual cost of total claims reimbursement from the Fund or qualifying individual health insurance contracts and for qualifying group health insurance contracts based upon available data

and appropriate actuarial assumptions. Upon request, each participating insurer shall furnish to the Commissioner claims experience data for use in the estimations.

(n) The Commissioner shall determine total eligible enrollment under qualifying group health insurance contracts and qualifying individual health insurance contracts. For qualifying group health insurance contracts, the total eligible enrollment shall be determined by dividing the total funds available for distribution from the Fund by the estimated per-member annual cost of total claims reimbursement from the Fund. For qualifying individual health insurance contractors, the total eligible enrollment shall be determined by dividing the total funds available for distribution from the Qualifying Individual Stop Loss Fund by the estimated per-member annual cost of total claims reimbursement from the Fund.

(o) The Commissioner shall suspend the enrollment under qualifying group or individual health insurance contracts if the Commissioner determines that the total enrollment reported by all participating insurers under the qualifying group or qualifying individual contracts exceeds the total eligible enrollment for each type of contract, thereby resulting in anticipated annual expenditures from the Fund in excess of the total funds available for distribution from the Fund.

(p) The Commissioner shall provide participating insurers with notification of any enrollment suspensions as soon as practicable after receipt of all enrollment data. The Commissioner's determination and notification shall be made separately for qualifying group health insurance contracts and for qualifying individual health insurance contracts.

(q) If, at any point during a suspension of enrollment of new qualifying small employers or qualifying individuals, the Commissioner determines that funds are sufficient to provide for the addition of new enrollments, the Commissioner may reactivate new enrollments and shall notify all participating insurers that enrollment of new employers or individuals may again commence. The Commissioner's determination and notification shall be made separately for the qualifying group health insurance contracts and for the qualifying individual health insurance contracts.

(r) The suspension of issuance of qualifying group health insurance contracts to new qualifying small employers shall not preclude the addition of new employees of an employer already covered under the contract or new dependents of employees already covered under the contracts.

(s) The suspension of issuance of qualifying individual health insurance contracts to new qualifying individuals shall not preclude the addition of new dependents to an existing qualifying individual health insurance contract.

(t) The premiums for qualifying health insurance contracts must factor in the availability of reimbursement from the Fund.

(u) If the Commissioner deems it appropriate for the proper administration of the Fund, the Commissioner may purchase stop loss insurance or reinsurance in the open market from an insurance company licensed to write this type of insurance in this State. The stop loss insurance or reinsurance may be purchased to the extent funds are available for this purpose.

(v) The Commissioner may access monies from the Fund for the purposes of developing and implementing public education, outreach, and enrollment strategies targeted to small employers and working adults without health insurance. The Commissioner may contract with marketing organizations to perform or provide assistance with the education, outreach, and enrollment strategies. The Commissioner shall determine the amount of funding available for the purposes of this subsection, which in no event shall exceed fifty thousand dollars ($50,000).

"**§ 58-50-166. Stop loss insurance.**

(a) An insurer authorized to issue stop loss policies under this Chapter may issue stop loss insurance as provided in this section provided that the stop loss insurance policy does not otherwise violate this Chapter.

(b) A stop loss insurance policy whereby the stop loss insurer agrees to pay claims or indemnify a participating insurer for losses incurred under a qualifying group health insurance contract in excess of specified loss limits for individual claims or for all claims combined, or any similar arrangement shall clearly describe:

(1) The entire money or other consideration for the policy;

(2) The time at which the insurance takes effect and terminates;

(3) The specified per-claim, per-employee, or aggregate amount of claims above which payment or reimbursement is to be made by the insurer; and

(4) The payments to be made by the insurer once the specified stop loss thresholds have been exceeded.

"**§ 58-50-167. Rating of products eligible for reimbursement; data collection.**

(a) The premium rates established for qualifying health insurance contracts must recognize the availability of reimbursement from the applicable Fund.

(b) Reimbursement from the applicable Fund shall reduce claims expenses for the purposes of calculating loss ratios, premium rates, and premium rate adjustments and for the purposes of determining compliance with this Part.

(c) Initial rate submissions and rate adjustment applications submitted for qualifying health insurance contracts shall contain such information as may be needed in order to assist the Commissioner in determining the anticipated premium rate impact of the availability of reimbursement from the Fund.

(d) Estimates of anticipated receipts from the Fund may be calculated based upon available enrollment data and such other data as may be deemed appropriate by the Commissioner.

(e) Qualifying health insurance contracts under the Program shall be treated as individual products for the purpose of applying loss ratio standards.

(f) Participating insurers may reinsure their Program business in whole or in part if they determine it would favorably impact premium rates. The impact of the reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and qualifying individual health insurance premiums.

"**§ 58-50-168. Data filing requirements.**

(a) The Commissioner shall require the submission of necessary claims data in connection with each participating insurer's annual submission of requests for

reimbursement from the Fund. Each participating insurer shall also provide the Commissioner with such additional data as the Commissioner deems necessary to oversee the operation of the Funds and the Program. The Commissioner may require that all data submitted include detail by month on each data point in order to ensure trend detection. Reports pertaining to stop loss reimbursement or loss ratio shall be certified by an officer of the participating insurer company that the report is accurate and complete. Data to be submitted may include:

(1) The total number of contracts issued within the reporting period and the total number of contracts in force that are covered by the Fund;

(2) The number of qualifying individual health insurance contracts issued that do not provide coverage for dependents;

(3) The number of qualifying small employer health insurance contracts where the employer elects not to make dependent coverage available to employees;

(4) The total number of primary insureds, the total number of dependents covered, and the total number of child dependents covered;

(5) Total premium earned and per-member-per-month premium earned for all contracts covered by the Fund for the reporting period;

(6) Claims payment data on a calendar year/paid basis, reported individually for each covered member or for each covered member for whom the participating insurer has paid claims eligible for reimbursement;

(7) Total claims for reimbursement year-to-date; and

(8) Paid claims continuance tables containing the number of claimants and the total number of claims paid by claimant-dollar intervals. The Commissioner shall provide a written and electronic spreadsheet with specific claimant-dollar intervals and any partitions of paid claims other than by the Fund.

(b) Data shall be reported separately for each Fund. Data reporting periods may be other than a calendar year, and reporting frequency for some data could be as often as monthly. Claims payment data shall clearly set forth both the date the claim was incurred and the date the claim was paid. Claims payment data may also be requested on a cumulative basis or in the form of aggregates, categoricals, and averages.

(c) A participating insurer shall use a coding system to ensure the privacy of insured individuals. Personally identifying information shall not be submitted with claims data.

"**§ 58-50-169. Independent evaluation of Healthy NC Program.**

(a) An evaluation of the Program shall be conducted annually. The Commissioner shall issue a Request for Proposal for the Program evaluation by an independent contractor. The Commissioner may access monies from the Fund to pay for the contractor's services. The independent contractor shall include in the evaluation the following:

(1) Program enrollment for the prior calendar year, including enrollment levels over time, enrollment distribution by member type, by health plan, and by county.
(2) The relationship between premium levels and Program enrollment.
(3) Analysis of the Program cost experience.
(4) Surveys of covered members, participating insurers, and qualifying small employers, individuals, and self-employed persons.
(5) Effectiveness of eligibility and other requirements in minimizing adverse selection.
(6) Recommendations for strengthening the viability and effectiveness of the Program.

(b) The Commissioner shall report to the General Assembly annually, upon its convening, on the status of the Program and shall make recommendations for legislative action.

"**§ 58-50-170. Conflicts with other provisions of this Chapter.**

If a conflict arises between a provision of this Part and another provision of this Chapter, this Part shall control to the extent necessary to implement this Part.

"**§ 58-50-171. Commissioner's duties.**

(a) The Commissioner shall adopt and implement policies, procedures, guidelines, and forms as are necessary to implement this Part and in a way that provides for expedient and efficient administration and minimizes the administrative burden on insurers.

(b) The Commissioner may adopt rules in accordance with Chapter 150B of the General States to implement this Part.

"**§ 58-50-172. Right to amend.**

The General Assembly reserves the right to alter, amend, or repeal this Part."

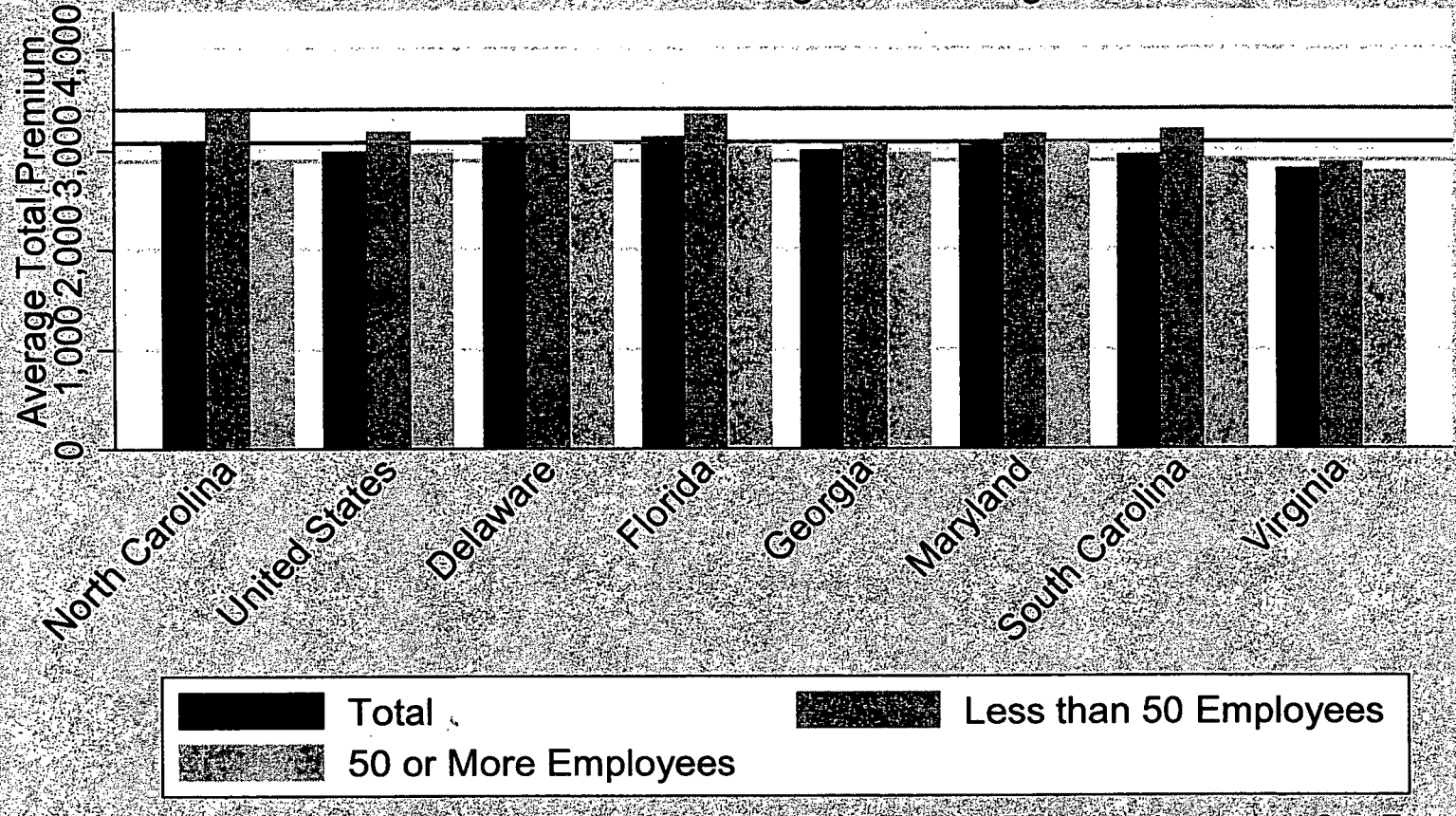
SECTION 3. The Commissioner of Insurance report to the 2008 Regular Session of the 2007 General Assembly shall include recommendations on the following:

(1) Whether eligibility requirements should be further limited by income or other means, and if so, what the limitations should be;
(2) Whether a separate pool for high-risk health coverage should be established for rating purposes; and
(3) Whether further actions are necessary to inhibit adverse selection under Program coverage, and if so, what specific actions are necessary.

SECTION 4. This act is effective when it becomes law and applies to health insurance contracts issued, delivered, or renewed on and after January 1, 2007. This act becomes effective only if the 2005 General Assembly has appropriated funds to the Reserve for Healthy NC to implement this act.

Total Premium

2001-2002 Weighted Average



Source: Agency for Healthcare Research and Quality, Center for Financing, Access and Cost Trends 2001 & 2002 Medical Expenditure Panel Survey-Insurance Component, Table IIC1

North Carolina's premiums are a little higher than most in the region. **North Carolina has the highest total premium for small employers in the South Atlantic**. Only Virginia has a lower premium than NC for large employers. Note that one reason the overall average makes us look a little better is that we have more employees in large employers than other states in our region.

Summary

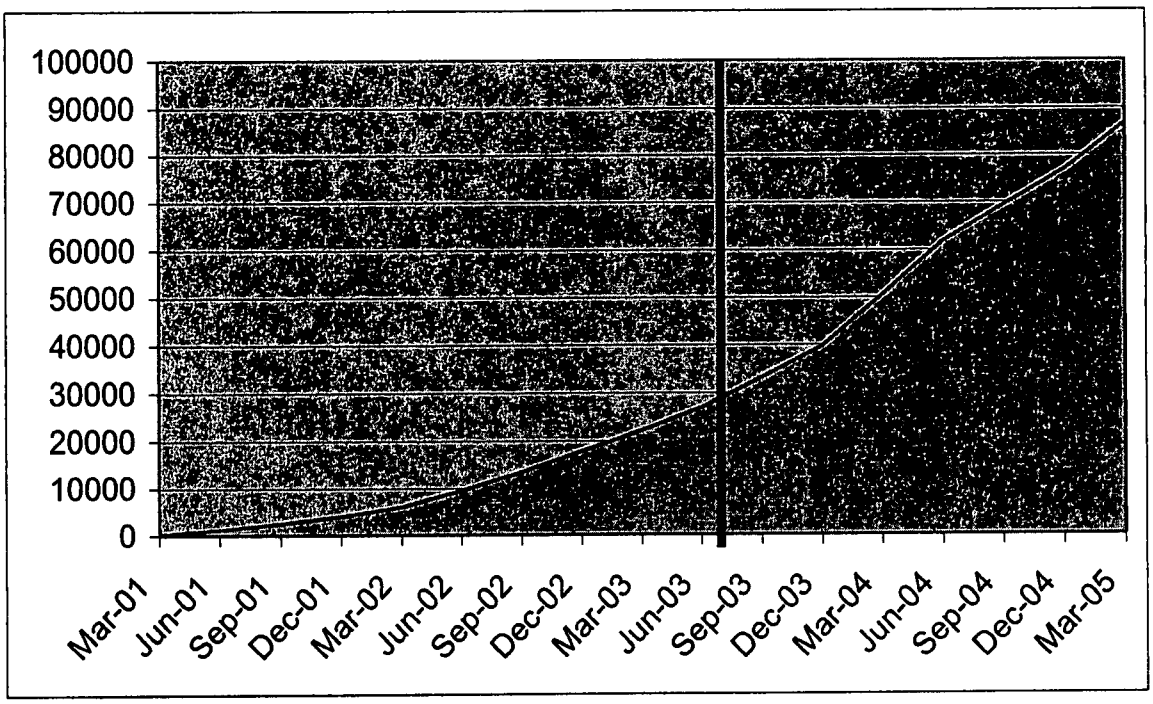
- Small firms face higher premiums
- North Carolina **small firm premiums are the most expensive in the region**
- Employers and employees both bear the higher cost

Premiums for Most Popular Providers in 6 NY Counties

County	Population	Provider	2001 without Healthy NY	2001 with Healthy NY	Jan-July 2003 with Healthy NY	2004 with Healthy NY*
Albany	298,432	CDPHP	$294	$156	$156	$129
		Healthnow	$363	$151	$151	$126
Cayuga	81,916	Excellus	$297	$186	$225	$187
		Aetna	$282	$185	$202	$187
Genesee	59,689	Excellus	$271	$178	$159	$132
		IHA	$244	$138	$138	$115
Orange	320,352	Empire	$302	$181	$247	$175
		GHI HMO	$399	$176	$189	$157
Suffolk	1,475,488	MDNY	$350	$184	$198	$164
		Vytra	$342	$164	$164	$164
Westchester	942,444	Empire	$336	$205	$279	$198
		Oxford	$317	$222	$228	$190

*** Included Pharmacy Benefit**

Net Enrollment in Healthy NY*



Detailed Statistics

March, 2001	222
June, 2001	1,197
September, 2001	2,578
December, 2001	4,024
March, 2002	6,047
June, 2002	9,519
September, 2002	13,388
December, 2002	17,752
March, 2003	22,085
June, 2003	26,854
September, 2003*	33,090
December, 2003	39,661
March, 2004	50,358
June, 2004	61,621
September, 2004	69,166
December, 2004	76,704
March, 2005	86,639

*** Threshold was adjusted on July 1, 2003 from 90% coverage of eligible costs between $25,000 and $100,000 to 90% coverage of eligible costs between $5,000 and $75,000.**

Stop Loss Reimbursement From 2001 to 2004

	Reimbursement Cost	Total Participants	Cost Per Participant
2001	$115,900	4,024	$28.89
2002	$715,000	17,752	$40.27
2003*	$13,300,000	39,661	$335.34
2004	$34,500,000	76,704	$449.78

*** Threshold was adjusted on July 1, 2003 from 90% coverage of eligible costs between $25,000 and $100,000 to 90% coverage of eligible costs between $5,000 and $75,000.**

States Inquiring with the Healthy NY Program

Colorado*
California
Pennsylvania
Oklahoma
Washington
Tennessee

*** Has passed the Colorado Senate. See SB05-237**

New York Experiences

What is the population of New York?

According to 2002 Census data, the population of New York was 19,283,000, of which 15.8% (3,042,000) were uninsured.

Were health insurers in New York driven out of the market by the burden placed on them to administer the program?

No, independent evaluation of the program found that contrary to driving insurers out of the market due to the burden and cost borne by insurers, insurers who were not required to participate were beginning to enter the Healthy NY market to compete for coverage of qualifying individuals and small employers.

Has Medicaid realized any savings as a result of previously uninsured individuals being covered by Healthy NY?

NY Department of Insurance staff believed that there was no doubt that Healthy NY reduced Medicaid expenditures in the state. Unfortunately, they have not been able to quantify the savings. Much of the population enrolling in Healthy NY would only have had access to health care through Medicaid or as uncompensated care without the program.

In New York, has the number of small employers paying their employee's full premium decreased since implementation of Healthy NY?

The NY Department of Insurance has not seen any evidence of this.

In New York, how many small employers currently pay the full premium for their employees' coverage in Healthy NY and out of Healthy NY?

They do not have figures for the insured population out of Healthy NY. The NY Department of Insurance contact believed that a relatively high number of employers participating in Healthy NY do pay the full premium, but was unable to provide any specific number.

Are insurers participating in Healthy NY losing money as a result of being required to offer a Healthy NY health insurance plan?

No. Independent evaluations conducted of the Healthy NY program for the New York Department of Insurance have shown that no insurers are losing money by participating in the program. One has broken even with their insurance plan offered and all other insurers have made a profit on the Healthy NY plans offered.

SENATE BILL 255 – SMALL EMPLOYER HEALTH INSURANCE

North Carolina Health Insurance Figures

Trends for 2000 to 2003:

- Premiums for employer-based plans in North Carolina rose by 43.4%.
- The number of uninsured North Carolinians increased 31.1%.
- 457,000 North Carolinians lost health insurance due to rising health costs and economic downturn.
- More than 300,000 North Carolinians remained uninsured, joining the ranks of the uninsured.
- 230,000 North Carolinians were added to Medicaid.

Recent figures:

- 1.4 million North Carolinians are without health insurance coverage.
- Premiums for employer-based plans in North Carolina have risen by 43.4%.
- A family health insurance plan in North Carolina costs about $9,000 per year.

General Questions

How many small employers are currently providing health coverage for their employees?

There are currently 49,747 small employers (1-50 employees) providing health insurance to their employees in North Carolina. Of these 48,872 provide some form of a small group carrier plan offered by a health insurer. These plans provide insurance coverage for a total of 550,283 individuals. 875 employers, primarily sole proprietors, are covered by either the basic or standard plan offered under the NC Small Employer Group Health Coverage Reform Act. A total of 1,463 persons are covered by these plans.

Why are small employers that currently provide health insurance coverage for their employees excluded from this bill?

The main goal of this bill is to encourage insurance coverage of small business employees and working individuals who are currently uninsured. Additionally, the large number of individuals and employers currently providing employer sponsored insurance covered under the NC Small Employer Group Health Coverage Reform Act would be too great for proposed funding levels for this new program to absorb immediately.

What incentive do insurers have to keep claims below the minimum threshold?

Insurers will still be liable for 10% of the cost of claims in the stop-loss claims corridor, so that care would still cost the insurer more than not having the claim made (by remaining below the threshold).

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Poyner & Spruill LLP
Lu Ann Cole	CFSA
[illegible]	[illegible]
Joe Blow	Brewer
[illegible]	CAA
[illegible]	LBA
[illegible]	[illegible]
Kaye Gattis	NC State Ports Authority
Anne Jo Horne	NC Medical Society
Michelle Frazier	NC Bar Assoc.
Doug Heron	" " "

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Miller	CUCA
Kathleen Edwards	UNC-CH Institute of Gov't
[signature]	NCAHP
Dana Simpson	Smith Anderson
Courtney Mischen	Smith Anderson
JP Sevilla	Smith Anderson
Laura Sirianni	Smith Anderson
Barbara Conley	BSCGR
John Burdeish	AstraZeneca
Jim Blackburn	NC Association of County Commissioners
Patrice Roesler	NCACC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gregg Thompson	NFIB
Cam Cauley	BPMHL
John McMillan	NAHP
Joe Stewart	IFNC
[illegible]	NMRS
[illegible]	JD, AL, PA
Kelly Lewis	NCAHP
Robert Pasichal	Young, Moore
Ken John	Smith Anderson
Marlene Foster	NCAHP
Alice Garland	NC DOC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Troutman	NCACC
[illegible]	NC JCOA
[illegible]	S.A.
[illegible]	Hunton & Wms
Tripp Melton	Sen. Stevens Office
[illegible]	State Wahl
[illegible]	Capitol Group
Amy Hobbs	Hobbs & Co
[illegible]	NCFPC
[illegible]	NCFPC
[illegible]	[illegible]

Senate Commerce Committee
Tuesday, July 5, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 392	Amend Definition of Malt Beverage in ABC Law.	Representative Earle Representative Holliman Representative LaRoque Representative Daughtridge, Jr.
HB 1332	Electronic Purchases and Sales.	Representative Saunders
HB 1353	Muni Electric Service Customers/Lenior County.	Representative LaRoque
HB 1469	Utilities Access to Public Rights-of-Way.	Representative Saunders Representative Brubaker
HB 1500	Wine-Tasting Changes.	Representative Harrell, III Representative Gibson, III
HB 1522	Amend State Ports Enabling Legislation.	Representative McComas

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, July 5, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on July 5, 2005, in Room 1027 of the Legislative Building. Ten members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Representative Pryor Gibson to explain HB 1522, Amend State Ports Enabling Legislation, on behalf of Representative Danny McComas. Ms. Kaye Gattis, Government Relations Manager, explained further and answered questions. Senator William Purcell moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Pryor Gibson to explain HB 1500, Wine-Tasting Changes. Senator Richard Stevens moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Julia Boseman moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Representative Drew Saunders to explain HB 1469, Utilities Access to Public Rights-of-Way. Senator Katie Dorsett moved a favorable report of the bill. The motion carried.

Senator Soles again recognized Representative Saunders, to explain HB 1332, Electronic Purchases and Sales. Senator Dorsett moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Stevens moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Representative Stephen LaRoque to explain HB 1353, Muni Electric Service Customers/Lenoir County. Senator Presnell moved a favorable report of the bill. The motion carried.

Senator Soles again recognized Representative LaRoque to explain HB 392, Amend Definition of Malt Beverage in ABC Law. Rev. Mark Creech, Executive Director of the Christian Action League of North Carolina spoke against the bill. Senator Boseman moved a favorable report of the bill. The motion carried.

The meeting adjourned at 11:35 a.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 05, 2005

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

FAVORABLE

H.B. **1353** Muni Electric Service Customers/Lenior County.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **1469** Utilities Access to Public Rights-of-Way.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1332** Electronic Purchases and Sales.
Draft Number: PCS 50433
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 06, 2005

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

FAVORABLE

H.B.(CS #2) **392** Amend Definition of Malt Beverage in ABC Law.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1500** Wine-Tasting Changes.
Draft Number: PCS 10378
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

HOUSE BILL 1522:
Amend State Ports Enabling Legislation

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	July 5, 2005
Introduced by:	Rep. McComas	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1522 would amend the State Ports Authority laws to remove the City of Southport from the cities in which the State Ports Authority is to operate harbors and seaports. The bill also expands the State Ports Authority executive committee from 3 members to 5 members.***

CURRENT LAW: Currently a part of the State Ports Authority's duties is to develop and improve the harbors and seaports at Wilmington, Morehead City and Southport as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce to and from North Carolina. Also the current law requires the Authority to appoint an executive committee consisting of the chair of the Authority and two members elected by the Authority.

BILL ANALYSIS:

Section 1 of the bill would amend the authority of the State Port Authority to develop and improve harbors and seaports to only facilities in Wilmington and Morehead City. The State Ports would not be required to develop or improve the harbor or seaport at Southport.

Section 2 would expand the size of the State Port Authority from 3 members to 5 members.

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

H1522e1-SMRU

HOUSE BILL 1522

Short Title: Amend State Ports Enabling Legislation. (Public)

Sponsors: Representatives McComas; and Stiller.

Referred to: Commerce.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE PORTS AUTHORITY ENABLING LEGISLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-453 reads as rewritten:

"**§ 143B-453. Purposes of Authority.**

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the harbors or seaports at ~~Wilmington,~~ Wilmington and Morehead ~~City and Southport,~~ City, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

..."

SECTION 2. G.S. 143B-454(a)(5) reads as rewritten:

"(5) The Authority shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and ~~two~~ four other members elected annually by the

Authority. The executive committee shall be vested with authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected;".

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1500

Committee Substitute Favorable 5/4/05

Third Edition Engrossed 5/10/05

Short Title: Wine-Tasting Changes. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REQUIREMENTS TO HOLD A WINE-TASTING PERMIT AND TO AMEND THE LAW CONCERNING COMMUNITY COLLEGE VITICULTURE/ENOLOGY PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001(15) reads as rewritten:

"(15) Wine-Tasting Permit. – A wine-tasting permit authorizes wine tastings on ~~the~~ a premises ~~conducted and supervised by the permittee.~~ holding a retail permit, by the retail permit holder or his employee. A wine tasting consists of the offering of a sample of one or more unfortified wine products, in amounts of no more than one ounce for each sample, without charge, to customers of the business. Any person pouring wine at a wine tasting shall be at least 21 years of age.

a. Representatives of the winery, which produced the wine, ~~or~~ the wine ~~producer~~ producer, a wholesaler, or a wholesaler's employee may assist with the ~~tastings in a manner consistent with existing law.~~ tasting. Assisting with a wine tasting includes, but is not limited to:

1. Pouring samples for customers.
2. Checking the identification of patrons being served at the wine tasting.

b. When a representative of the winery which produced the wine, the wine producer, a wine wholesaler, or a wine wholesaler's employee assists in a wine tasting conducted by a retail permit holder:

1. The retail permit holder shall designate an employee to actively supervise the wine tasting.

2. A retail permit holder's employee shall not supervise more than three wine-tasting areas.
3. No more than six wines may be tasted at any one tasting area.
4. The wine tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of law occurring in connection with the wine tasting.

The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of wine, and that the tastings are not used by industry members for unlawful inducements to retail permit holders, and do not violate existing rules. Except for purposes of this subsection, the holder of a wine-tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a wine-tasting permit."

SECTION 2. G.S. 18B-1114.4 reads as rewritten:

"**§ 18B-1114.4. Viticulture/Enology course authorization.**

(a) Authorization. – The holder of a viticulture/enology course authorization may:

(1) Manufacture wine from grapes grown on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of unfortified wines.
(2) Possess wines manufactured during the viticulture/enology program for the purpose of conducting wine-tasting seminars and classes for students who are 21 years of age or older.
(3) Sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit under G.S. 18B-1107, except that the permittee may not receive shipments of wines from other producers.

(b) Limitation. – Authorization for a viticulture/enology course shall be granted by the Commission only for a community college or college that offers a viticulture/enology program as a part of its curriculum offerings for students of the school. ~~No retail sales of wine shall be made by the students, instructor, or school.~~ Wines may be manufactured only from grapes grown in a viticulture/enology course ~~vineyard, not to exceed five acres,~~ vineyard that is located on the school's campus or the school's contracted or leased property.

(c) The holder of a vitaculture/enology course authorization who obtains a wine wholesaler permit under G.S. 18B-1107 subject to the limitation in subsection (a) of this section may ~~manufacture wines from grapes grown by others until June 30, 2004. Otherwise, wine may be manufactured only as provided in subsection (b) of this section.~~ obtain a winery special event permit under G.S. 18B-1114.1, and where the permit is valid may participate in approved events and sell at retail at those events any wine

produced incident to the operation of the vitaculture/enology program. The holder of a vitaculture/enology course authorization may participate in not more than six winery special events within a twelve-month period and may sell up to 25 cases of wine at each event. Net proceeds from the program's retail sale of wine pursuant to this subsection shall be retained by the school and used for support of the viticulture/enology program.

(d) The holder of a viticulture/enology course authorization shall not be considered a winery for the purposes of this Chapter or Chapter 105 of the General Statutes."

SECTION 3. G.S. 18B-1114.1(a) reads as rewritten:

"(a) Authorization. – The holder of an unfortified winery permit, a limited winery permit, a vitaculture/enology course authorization, or a wine producer permit may obtain a winery special permit allowing the winery or wine producer to give free tastings of its wine, and to sell its wine by the glass or in closed containers, at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission."

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

HOUSE BILL 1500:
Wine-Tasting/Wineries Wholesale License Changes

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	July 5, 2005
Introduced by:	Reps. Gibson, Harrell	**Summary by:**	O. Walker Reagan
Version:	PCS to Third Edition H1500-CSRU-68		Committee Co-Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1500 amends the requirements for wine tasting permits, clarifying the law concerning the participation of wineries, wine producers, and wholesalers and specifying the responsibilities of the permit holder. The bill permits community college viticulture/enology programs to sell wines produced from grapes grown on school grounds under certain circumstances. The bill also amends the law governing wine distribution agreements to provide that a NC winery acting as its own master wholesaler is not subject to certain laws governing wine distribution agreements.***

CURRENT LAW: G.S. 18B-1002(15) authorizes the issuance of wine tasting permits that allow the offering of one-ounce samples of one or more unfortified wine products, without charge. A wine tasting must be conducted and supervised by the permit holder. Representatives of the winery that produced the wine may assist with a wine tasting, subject to rules adopted by the ABC Commission. Wine tasting permits may be issued to food businesses, which are defined in G.S. 18B-1000 as any establishment "engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises." Food businesses include grocery stores, convenience stores, and other establishments where food is regularly sold. The fee for a wine tasting permit is $100.

Current law does not allow schools that manufacture wine as part of a course of study to sell the wine produced.

G.S. 18B-1204 prohibits a winery from amending, canceling, terminating, or refusing to renew an agreement with a wholesaler without good cause. G.S. 18B-1205 requires that a winery provide a wholesaler with at least 90 days prior written notice of an intent to amend, terminate, cancel or not renew any agreement. G.S. 18B-1207 provides that a wholesaler may sue the winery for a violation, and the court may grant injunctive and other relief including damages to compensate the wholesaler for the value of the agreement. A winery would also be required to compensate the wholesaler for the wine inventory, and could be subject to suspension or revocation of its winery permit and the imposition of a monetary penalty.

BILL ANALYSIS:

Section 1 allows the offering of wine samples by the permit holder or a designated employee. Any person pouring wine at a wine tasting must be at least 21 years old.

A winery, wine producer, wholesaler, or wholesaler employee's participation in a wine tasting specifically includes pouring samples or checking the ID of persons receiving the samples. The bill sets out specific requirements that apply when a winery, wine producer, wholesaler, or wholesaler's employee is participating in a wine tasting:

- An employee designated by the permit holder must actively supervise the wine tasting.
- The employee my not supervise more than three wine-tasting areas.

- No more than six wines may be tasted at any one tasting area.
- The wine tasting may not last longer than four hours from the designated starting time.

The bill provides that the retail permit holder is solely liable for any violation of Chapter 18B of the General Statutes occurring in connections with a wine tasting.

Section 2 expands the property on which grapes can be grown for schools and colleges that offer a viticulture/enology course of study to be used in the manufacture of wine. The bill also authorizes these schools to sell wine produced in these programs but limits the sales to the following conditions:

- The school must have a wine wholesaler permit and must obtain an ABC special event permit.
- Must sell all wine at the special event for which the permit was obtained.
- May participate in no more than 6 winery special events per year.
- May sell no more than 25 cases of wine at each special event.
- The net proceeds from the sales must be used to support the viticulture/enology program at the school.

Section 3 allows viticulture/enology programs to obtain winery special permits to give free tasting samples of wines and to sell wine under certain circumstances.

Section 4 makes the provisions of G.S. 18B-1204 (Cancellation), G.S. 18B-1205 (Notice of intent to terminate), and G.S. 18B-1207 (Judicial remedies) inapplicable to a North Carolina winery acting as its own master wholesaler.

EFFECTIVE DATE: This act is effective when it becomes law. Section 4 would not apply to pending litigation or claims accruing before the effective date.

Brenda Carter, counsel to House ABC Committee, substantially contributed to this summary.

H1500e3-SMRU-CSRU-68

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1500

Committee Substitute Favorable 5/4/05
Third Edition Engrossed 5/10/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1500-CSRU-68 [v.3]

7/5/2005 10:15:35 AM

Short Title: Wine-Tasting/Wineries Wholesale Lic. Changes. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REQUIREMENTS TO HOLD A WINE-TASTING PERMIT, THE LAW CONCERNING COMMUNITY COLLEGE VITICULTURE/ENOLOGY PROGRAMS, AND THE LAW GOVERNING WINE DISTRIBUTION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001(15) reads as rewritten:

"(15) Wine-Tasting Permit. – A wine-tasting permit authorizes wine tastings on ~~the~~ a premises ~~conducted and supervised by the permittee.~~ holding a retail permit, by the retail permit holder or his employee. A wine tasting consists of the offering of a sample of one or more unfortified wine products, in amounts of no more than one ounce for each sample, without charge, to customers of the business. Any person pouring wine at a wine tasting shall be at least 21 years of age.

a. Representatives of the winery, which produced the wine, ~~or~~ the wine ~~producer~~ producer, a wholesaler, or a wholesaler's employee, may assist with the ~~tastings in a manner consistent with existing law.~~ tasting. Assisting with a wine tasting includes:

1. Pouring samples for customers.
2. Checking the identification of patrons being served at the wine tasting.

b. When a representative of the winery that produced the wine, the wine producer, a wine wholesaler, or a wine wholesaler's employee assists in a wine tasting conducted by a retail permit holder:

1. The retail permit holder shall designate an employee to actively supervise the wine tasting.
2. A retail permit holder's employee shall not supervise more than three wine-tasting areas.
3. No more than six wines may be tasted at any one tasting area.
4. The wine tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the wine tasting.

The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of wine, and that the tastings are not used by industry members for unlawful inducements to retail permit ~~holders, and do not violate existing rules.~~holders. Except for purposes of this subsection, the holder of a wine-tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a wine-tasting permit."

SECTION 2. G.S. 18B-1114.4 reads as rewritten:

"**§ 18B-1114.4. Viticulture/Enology course authorization.**

(a) Authorization. – The holder of a viticulture/enology course authorization may:

(1) Manufacture wine from grapes grown on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of unfortified wines.

(2) Possess wines manufactured during the viticulture/enology program for the purpose of conducting wine-tasting seminars and classes for students who are 21 years of age or older.

(3) Sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit under G.S. 18B-1107, except that the permittee may not receive shipments of wines from other producers.

(b) Limitation. – Authorization for a viticulture/enology course shall be granted by the Commission only for a community college or college that offers a viticulture/enology program as a part of its curriculum offerings for students of the school. ~~No retail sales of wine shall be made by the students, instructor, or school.~~ Wines may be manufactured only from grapes grown in a viticulture/enology course ~~vineyard, not to exceed five acres,~~ vineyard that is located on the school's campus or the school's contracted or leased property.

(c) The holder of a vitaculture/enology course authorization who obtains a wine wholesaler permit under G.S. 18B-1107 subject to the limitation in subsection (a) of this section may ~~manufacture wines from grapes grown by others until June 30, 2004. Otherwise, wine may be manufactured only as provided in subsection (b) of this section.~~

obtain a winery special event permit under G.S. 18B-1114.1, and where the permit is valid may participate in approved events and sell at retail at those events any wine produced incident to the operation of the vitaculture/enology program. The holder of a vitaculture/enology course authorization may participate in not more than six winery special events within a twelve-month period and may sell up to 25 cases of wine at each event. Net proceeds from the program's retail sale of wine pursuant to this subsection shall be retained by the school and used for support of the viticulture/enology program.

(d) The holder of a viticulture/enology course authorization shall not be considered a winery for the purposes of this Chapter or Chapter 105 of the General Statutes."

SECTION 3. G.S. 18B-1114.1(a) reads as rewritten:

"(a) Authorization. – The holder of an unfortified winery permit, a limited winery permit, a vitaculture/enology course authorization, or a wine producer permit may obtain a winery special permit allowing the winery or wine producer to give free tastings of its wine, and to sell its wine by the glass or in closed containers, at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission."

SECTION 4. G.S. 18B-1200 reads as rewritten:

"**§ 18B-1200. Construction; findings and ~~purpose.~~purpose; exceptions.**

(a) This Article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of the Article are:

(1) To promote the compelling interest of the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;

(2) To protect wine wholesalers against unfair treatment by wineries;

(3) To provide wine wholesalers with rights and remedies in addition to those existing by contract or common law; and

(4) To govern all wine wholesalerships, including any renewals or amendments, to the full extent consistent with the Constitution of this State and the United States.

(c) The effect of this Article may not be waived or varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to the extent of that waiver or variance.

(d) A North Carolina winery holding a valid wine wholesaler permit issued pursuant to G.S. 18B-1101(7) and G.S. 18B-1107, when acting as its own master wholesaler, shall not be subject to the provisions of G.S. 18B-1204, 18B-1205, and 18B-1207."

SECTION 5. This act is effective when it becomes law. Section 4 of this act shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1500

Committee Substitute Favorable 5/4/05
Third Edition Engrossed 5/10/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1500-PCS10378-RU-68

Short Title: Wine-Tasting/Wineries Wholesale Lic. Changes. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REQUIREMENTS TO HOLD A WINE-TASTING PERMIT, THE LAW CONCERNING COMMUNITY COLLEGE VITICULTURE/ENOLOGY PROGRAMS, AND THE LAW GOVERNING WINE DISTRIBUTION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001(15) reads as rewritten:

"(15) Wine-Tasting Permit. – A wine-tasting permit authorizes wine tastings on ~~the~~ a premises ~~conducted and supervised by the permittee.~~ holding a retail permit, by the retail permit holder or his employee. A wine tasting consists of the offering of a sample of one or more unfortified wine products, in amounts of no more than one ounce for each sample, without charge, to customers of the business. Any person pouring wine at a wine tasting shall be at least 21 years of age.

a. Representatives of the winery, which produced the wine, ~~or~~ the wine ~~producer~~ producer, a wholesaler, or a wholesaler's employee may assist with the ~~tastings in a manner consistent with existing law.~~ tasting. Assisting with a wine tasting includes:

1. Pouring samples for customers.
2. Checking the identification of patrons being served at the wine tasting.

b. When a representative of the winery that produced the wine, the wine producer, a wine wholesaler, or a wine wholesaler's employee assists in a wine tasting conducted by a retail permit holder:

1. The retail permit holder shall designate an employee to actively supervise the wine tasting.
2. A retail permit holder's employee shall not supervise more than three wine-tasting areas.
3. No more than six wines may be tasted at any one tasting area.
4. The wine tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the wine tasting.

The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of wine, and that the tastings are not used by industry members for unlawful inducements to retail permit ~~holders, and do not violate existing rules.~~holders. Except for purposes of this subsection, the holder of a wine-tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a wine-tasting permit."

SECTION 2. G.S. 18B-1114.4 reads as rewritten:

"**§ 18B-1114.4. Viticulture/Enology course authorization.**

(a) Authorization. – The holder of a viticulture/enology course authorization may:

(1) Manufacture wine from grapes grown on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of unfortified wines.

(2) Possess wines manufactured during the viticulture/enology program for the purpose of conducting wine-tasting seminars and classes for students who are 21 years of age or older.

(3) Sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit under G.S. 18B-1107, except that the permittee may not receive shipments of wines from other producers.

(b) Limitation. – Authorization for a viticulture/enology course shall be granted by the Commission only for a community college or college that offers a viticulture/enology program as a part of its curriculum offerings for students of the school. ~~No retail sales of wine shall be made by the students, instructor, or school.~~ Wines may be manufactured only from grapes grown in a viticulture/enology course ~~vineyard, not to exceed five acres,~~ vineyard that is located on the school's campus or the school's contracted or leased property.

(c) The holder of a vitaculture/enology course authorization who obtains a wine wholesaler permit under G.S. 18B-1107 subject to the limitation in subsection (a) of this section may ~~manufacture wines from grapes grown by others until June 30, 2004. Otherwise, wine may be manufactured only as provided in subsection (b) of this section.~~

obtain a winery special event permit under G.S. 18B-1114.1, and where the permit is valid may participate in approved events and sell at retail at those events any wine produced incident to the operation of the viticulture/enology program. The holder of a viticulture/enology course authorization may participate in not more than six winery special events within a 12-month period and may sell up to 25 cases of wine at each event. Net proceeds from the program's retail sale of wine pursuant to this subsection shall be retained by the school and used for support of the viticulture/enology program.

(d) The holder of a viticulture/enology course authorization shall not be considered a winery for the purposes of this Chapter or Chapter 105 of the General Statutes."

SECTION 3. G.S. 18B-1114.1(a) reads as rewritten:

"(a) Authorization. – The holder of an unfortified winery permit, a limited winery permit, a viticulture/enology course authorization, or a wine producer permit may obtain a winery special permit allowing the winery or wine producer to give free tastings of its wine, and to sell its wine by the glass or in closed containers, at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission."

SECTION 4. G.S. 18B-1200 reads as rewritten:

"**§ 18B-1200. Construction; findings and ~~purpose.~~purpose; exceptions.**

(a) This Article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of the Article are:

(1) To promote the compelling interest of the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;

(2) To protect wine wholesalers against unfair treatment by wineries;

(3) To provide wine wholesalers with rights and remedies in addition to those existing by contract or common law; and

(4) To govern all wine wholesalerships, including any renewals or amendments, to the full extent consistent with the Constitution of this State and the United States.

(c) The effect of this Article may not be waived or varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to the extent of that waiver or variance.

(d) A North Carolina winery holding a valid wine wholesaler permit issued pursuant to G.S. 18B-1101(7) and G.S. 18B-1107, when acting as its own master wholesaler, shall not be subject to the provisions of G.S. 18B-1204, 18B-1205, and 18B-1207."

SECTION 5. This act is effective when it becomes law. Section 4 of this act shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1469

Committee Substitute Favorable 5/4/05
Committee Substitute #2 Favorable 5/19/05
Fourth Edition Engrossed 5/26/05

Short Title: Utilities Access to Public Rights-of-Way. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT GRANTING PUBLIC UTILITIES AND CABLE TELEVISION SYSTEMS IMMEDIATE ACCESS TO CERTAIN PUBLIC RIGHTS-OF-WAY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 62 of the General Statutes is amended by adding the following new section to read:

"**§ 62-182.1. Access to dedicated public right-of-way.**

When any map or plat of a subdivision, recorded as provided in G.S. 47-30 and G.S. 136-102.6, reflects the dedication of a public street or other public right-of-way, the dedicated public street or public right-of-way shall, upon recordation of the map or plat, become immediately available for use by any public utility or cable television system to install, maintain, and operate lines, cables, or facilities for the provision of service to the public. No public utility or cable television system shall place or erect any line, cable, or facility in, over, or upon a street or right-of-way in a subdivision that is intended to become a public street or public right-of-way, until a map or plat of the subdivision has been recorded as provided in G.S. 47-30 and G.S. 136-102.6, and except in accordance with procedures established by the Department of Transportation, Division of Highways, for accommodating utilities or cable television systems on highway rights-of-way. Upon recordation of a map or plat of a subdivision as provided in G.S. 47-30 and G.S. 136-102.6, no liability shall attach to the developer of the property as a result of any activity of a public utility or cable television system occurring in the dedicated public street or public right-of-way."

SECTION 2. This act is effective when it becomes law with respect to maps and plats recorded after the effective date.

HOUSE BILL 1469:
Utilities Access to Public Rights-of-Way

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	July 5, 2005
Introduced by:	Reps. Saunders, Brubaker	**Summary by:**	Steven Rose
Version:	Fourth Edition		Committee Counsel

SUMMARY: ***HB 1469 provides that once a plat is recorded showing dedicated public streets or rights-of-way any public utility or cable television company may use them to place its lines or other facilities for provision of service to the public.***

BILL ANALYSIS: G.S. 136-102.6 requires subdivisions with new streets intended to be dedicated to the public to have recorded plats delineating those public streets, after approval of the Division of Highways. This must be done before any lots are sold. G.S. 47-30 specifies the requirements for maps to be accepted for recording. The bill makes dedicated streets or rights-of-way available to utilities and cable television companies for placement of infrastructure once the plat is recorded. No use by a utility or cable television company is permitted until such recordation. Once the plat is recorded, a developer has no liability arising from the activities of a public utility or cable company in that street or right-of-way.

EFFECTIVE DATE: The act is effective when it becomes law with respect to maps or plats recorded after that date.

H1469e4-SMRL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1332

Short Title:	Electronic Purchases and Sales.	(Public)
Sponsors:	Representatives Saunders; and Faison.	
Referred to:	Ways and Means.	

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC PURCHASE AND SALE OF LOCAL GOVERNMENT PROPERTY AND TO MAKE OTHER PURCHASING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129 reads as rewritten:

"**§ 143-129. Procedure for letting of public contracts.**

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than three hundred thousand dollars ($300,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars ($90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the ~~manager or the~~ manager, school superintendent, chief purchasing ~~official, or both,~~ official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

...

(g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or ~~the manager or purchasing official delegated authority~~the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment

from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

(1) The United States of America or any federal agency;

(2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of ~~notice, in a newspaper of general circulation in the area served by the governing body,~~notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts."

SECTION 2. G.S. 143-131 reads as rewritten:

"**§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.**

(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of ~~five thousand dollars ($5,000)~~thirty thousand dollars ($30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded.

...."

SECTION 3. G.S. 160A-266 reads as rewritten:

"**§ 160A-266. Methods of sale; limitation.**

...

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five thousand dollars ($5,000)~~thirty thousand dollars ($30,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five thousand dollars ($5,000)~~ thirty thousand dollars ($30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange."

SECTION 4. G.S. 160A-270 reads as rewritten:

"**§ 160A-270. Public auction.**

...

(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all ~~All~~ requirements of subsections (a) and (b) of this section apply to electronic auctions."

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

HOUSE BILL 1332:
Electronic Purchases and Sales

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	July 5, 2005
Introduced by:	Rep. Saunders	**Summary by:**	Wendy Graf Ray
Version:	PCS to First Edition H1332-PCS504433-LB-54		Committee Counsel

SUMMARY: House Bill 1332 would make changes in the procedures for letting certain public contracts and conducting certain public sales.

BILL ANALYSIS:

Section 1. This section would amend G.S. 143-129, which governs the letting of public contracts by the State, State agencies, and local governments. For the purchase of supplies, apparatus, materials, or equipment, subsection (a) allows the governing body of a political subdivision of the State to delegate the power to award contracts and reject bids to the manager or chief purchasing official. The bill would add the school superintendent and other employees designated by the governing body to those who may accept or reject bids.

Subsection (g) allows the formal bidding requirements of G.S. 143-129 to be waived by political subdivisions of the State for purchase of apparatus, supplies, materials, or equipment when the purchase is from a supplier who has completed similar formal bidding process within the last 12 months and entered into a contract to supply the same items, if the supplier is willing to furnish them for the same, or better, price, terms and conditions. Such a purchase must be approved by the governing body at a regularly scheduled meeting after 10 days notice in a newspaper of general circulation in the area served by the governing body. The amendment to subsection (g) would permit notice of the meeting to be by electronic means in addition to, or instead of, the newspaper notice. Use of electronic notice would have to be approved by the governing body.

Section 2. G.S. 143-131 provides that contracts for repairs or construction in the amount of $5,000 or more, but less than $300,000, or for apparatus, supplies, materials, or equipment in the amount of $5,000 or more but less than $90,000, made by any officer, department, board, or commission of any local government or other subdivision of the State shall be by informal bids. The bill would amend subsection (a) to raise $5,000 to $30,000 and add local school administrative units to the entities that must use informal bids.

Section 3. G.S. 160A-266(c) allows cities to adopt regulations for the disposal of personal property worth less than $5,000 in substitution for the statutory requirements. It also allows the city council to authorize city officials to declare personal property worth less than $5,000 as surplus, determine its value, and sell it. The amendments to subsection (c) would raise the $5,000 figures to $30,000.

Section 4. G.S. 160A-270 governs sales of real and personal property of cities by public auction. Subsection (c) authorizes the use of an electronic auction procedure. Presently, notice must be by publication. The notice must specify the electronic address where information about the property can

be obtained and where bids can be posted. The bill would amend subsection (c) to provide that for an electronic auction, the notice may be by publication or by electronic means, or both. Notice by electronic means alone would have to be approved by the governing board.

Section 5. This section makes clear that, if there are any local modifications to the dollar amounts amended in this bill, then the statewide statute prevails if those dollar amounts are lower than the $30,000 threshold provided in this bill.

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

Steve Rose, counsel to the House Ways and Means Committee, substantially contributed to this summary.

H1332e1-SMSU-PCS504433-LB-54

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1332
PROPOSED SENATE COMMITTEE SUBSTITUTE H1332-PCS50433-LB-54

Short Title: Electronic Purchases and Sales. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC PURCHASE AND SALE OF LOCAL GOVERNMENT PROPERTY AND TO MAKE OTHER PURCHASING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129(a) and (g) read as rewritten:

"**§ 143-129. Procedure for letting of public contracts.**

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than three hundred thousand dollars ($300,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars ($90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the ~~manager or the~~ manager, school superintendent, chief purchasing ~~official, or both,~~ official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

...

(g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or ~~the manager or purchasing official delegated authority~~the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this

section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

(1) The United States of America or any federal agency;

(2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of ~~notice, in a newspaper of general circulation in the area served by the governing body;~~notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts."

SECTION 2. G.S. 143-131(a) reads as rewritten:

"**§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.**

(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of ~~five thousand dollars ($5,000)~~thirty thousand dollars ($30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded."

SECTION 3. G.S. 160A-266(c) reads as rewritten:

"**§ 160A-266. Methods of sale; limitation.**

...

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five thousand dollars ($5,000)~~thirty thousand dollars ($30,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five thousand dollars ($5,000)~~ thirty thousand dollars ($30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange."

SECTION 4. G.S. 160A-270(c) reads as rewritten:

"**§ 160A-270. Public auction.**

...

(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all ~~All~~ requirements of subsections (a) and (b) of this section apply to electronic auctions."

SECTION 5. This act raises the threshold amount in G.S. 143-131 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict.

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1353

Short Title:	Municipal Electric Service Customers.	(Public)
Sponsors:	Representative LaRoque.	
Referred to:	Rules, Calendar, and Operations of the House.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO HEAR CONTROVERSIES SUBMITTED BY MUNICIPAL ELECTRIC SERVICE CUSTOMERS WHO LIVE OUTSIDE THE MUNICIPALITY'S CORPORATE BOUNDARIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-312 reads as rewritten:

"**§ 160A-312. Authority to operate public enterprises.**

...

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the corporate limits of the city, and may be enforced with the remedies available under any provision of law. Notwithstanding the provisions of this section, the North Carolina Utilities Commission shall have the authority to hear and determine controversies submitted by customers of a municipal electric service supplier who live outside the corporate limits of the city.

...."

SECTION 2. G.S. 62-40 reads as rewritten:

"**§ 62-40. To hear and determine controversies submitted.**

(a) When a public utility embraced in this Chapter has a controversy with another person and all the parties to such controversy agree in writing to submit such controversy to the Commission as arbitrator, the Commission shall act as such, and after due notice to all parties interested shall proceed to hear the same, and its award shall be final. Such award in cases where land or an interest in land is concerned shall immediately be certified to the clerk of the superior court of the county or counties in which said land, or any part thereof, is situated, and shall by such clerk be docketed in the judgment docket for such county, and from such docketing shall have the same

effect as a judgment of the superior court for such county. Parties may appear in person or by attorney before such arbitrator.

(b) The Commission shall act as arbitrator when a customer of a municipal electric service supplier who lives outside the corporate limits of the city has a controversy with the municipal electric service supplier. The parties to the controversy do not have to agree to submit the controversy to the Commission, but the Commission shall provide due notice to all parties as provided in subsection (a) of this section and the Commissions' decision shall be final."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 1353:
Muni Electric Service Customers/Lenoir County

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	July 5, 2005
Introduced by:	Rep. LaRoque	**Summary by:**	Steven Rose
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 1353 is a local act that provides that a customer of a municipal electric system who lives outside the corporate limits of the city may have the public staff of the Utilities Commission resolve disputes between the customer and the municipal electric system. The customer must first exhaust any administrative remedies adopted by the municipality.

The bill applies to Lenoir County only.

The act would become effective October 1, 2005.

CURRENT LAW: Article 8 of Chapter 160A grants to cities the authority to undertake "enterprise" activities such as the generation and provision of electric service. These municipal electric systems generally are not subject to the regulation or control of the North Carolina Utilities Commission. Instead, municipal accountability for issues of service and rates are thought to be addressed through the election process. However, these systems frequently serve individuals who live outside the corporate limits of the municipality, and therefore are not able to vote in the municipal elections.

BILL ANALYSIS:

Section 1 amends G.S. 160A-312(b) to provide that a municipality shall have full authority to protect and regulate any public enterprise system, except as provided in G.S. 160A-327.

Section 2 creates G.S. 160A-327, which provides that the public staff of the Utilities Commission shall have the authority to hear and resolve disputes concerning electric service between customers who live outside the corporate limits of a city and the city. A dispute means a disagreement between the customer and the municipal electric system regarding the quality of the service provided or whether the rates are applied fairly and evenly between customers. The authority of a municipality to set differential rates under G.S. 160A-312(b) would not be affected.

A customer would have to first try to resolve the dispute through any administrative remedy the municipality has adopted. If the municipality does not have an administrative remedy, the customer must submit the controversy to the governing body of the city.

If the dispute cannot be resolved administratively, the customer may submit the dispute the public staff. The staff will have the authority to issue an opinion resolving the dispute, which will be binding upon both parties.

These procedures would only apply to Lenoir County.

H1353e3-SMRL

Kory Goldsmith, Counsel to the House Public Utilities Committee, contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 392

Committee Substitute Favorable 4/18/05

Committee Substitute #2 Favorable 4/27/05

Short Title: Amend Definition of Malt Beverage in ABC Law. (Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF A MALT BEVERAGE UNDER THE ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101(9) reads as rewritten:

"(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than ~~six percent (6%),~~ fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage."

SECTION 2. G.S. 105-113.68(a) reads as rewritten:

"(a) Definitions. – As used in this Article, unless the context clearly requires otherwise:

(1) ~~"ABC Commission" means~~ ABC Commission. – ~~the~~ The North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(2) Repealed by Session Laws 2004-170, s. 6, effective August 2, 2004.

(3) ~~"ABC permit" means a written or printed authorization issued by the ABC Commission pursuant to Chapter 18B, other than a purchase-transportation permit. Unless the context clearly requires otherwise, "ABC permit" means a presently valid permit.~~ABC permit. – Defined in G.S. 18B-101.

(4) ~~"Alcoholic beverage" means a beverage containing at least one half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.~~Alcoholic beverage. – Defined in G.S. 18B-101.

(5) ~~"Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.~~Fortified wine. – Defined in G.S. 18B-101.

(6) ~~"License" means a~~ License. – A certificate, issued pursuant to this Article by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry.

(7) ~~"Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one half of one percent (0.5%) and not more than six percent (6%) alcohol by volume.~~Malt beverage. – Defined in G.S. 18B-101.

(8) ~~"Person" has the same meaning as in G.S. 105-228.90.~~Person. – Defined in G.S. 105-228.90.

(9) ~~"Sale" means a transfer, trade, exchange, or barter, in any manner or by any means, for consideration.~~Sale. – Defined in G.S. 18B-101.

(10) ~~"Secretary" means the~~ Secretary. – The Secretary of Revenue.

(11) ~~"Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin, and all other distilled spirits and mixtures of cordials, liqueurs, and premixed cocktails in closed containers for beverage use regardless of the dilution.~~Spirituous liquor or liquor. – Defined in G.S. 18B-101.

(12) ~~"Unfortified wine" means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and produced in accordance with the regulations of the United States.~~Unfortified wine. – Defined in G.S. 18B-101.

(13) ~~"Wholesaler or importer" when~~ Wholesaler or importer. – When used with reference to wholesalers or importers of wine or malt beverages includes resident wineries that sell their wines at retail and resident breweries that produce fewer than 310,000 gallons of malt beverages per year.

(14) ~~"Wine" means unfortified~~ Wine. – Unfortified and fortified wine.

(15) ~~"Wine shipper permittee" means a~~ Wine shipper permittee. – A winery that holds a wine shipper permit issued by the ABC Commission under G.S. 18B-1001.1."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 392:
Amend Definition of Malt Beverage in ABC Law

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	July 5, 2005
Introduced by:	Reps. LaRoque, Earle, Holliman, Daughtridge	**Summary by:**	O. Walker Reagan
Version:	Third Edition		Committee Co-Counsel

SUMMARY: ***House Bill 392 would change the current maximum limit on alcoholic content of malt beverages from six percent to fifteen percent. The bill would also make conforming technical changes to the revenue laws to refer to define ABC terms by cross reference to the Alcoholic Beverage Control Law.***

CURRENT LAW: Current law defines malt beverages as "beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6.0%), alcohol by volume." Sales of malt beverages with alcohol content in excess of 6.0% are illegal in the State.

BILL ANALYSIS: Section 1 of the bill would remove the maximum cap of 6.0% and would allow these malt beverages with alcohol contents of up to fifteen percent (15%) to be sold in the State. Malt beverages with alcohol content greater than 6% would require a label indicating the alcohol content of the malt beverage.

Section 2 of the bill amends the definition section of Article 20 of Chapter 105 - Revenue Laws that deals with alcoholic beverage license and excise taxes. These changes conform the definition in the revenue statutes to the definitions in the alcoholic beverage control statutes by cross-reference to Chapter 18B – Alcoholic Beverage Control Act.

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

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Chip Killian	Nelson Mullins
Patricia Lawler	NCACC
Kam John	Smith Anderson
Jan Fitzgerald	NCFPC
[illegible]	NCFPC
Stephanie Simpson	NCAR
John McMillan	NFDS
Mary Mansfield	Poyner & Spruill
Ken Franklin	Jack Walsh
[illegible]	Sen. Apodaca's Office
Paul Hoglund	Inform Inc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Mark Creech	CAL
Paul Meyer	NC Assoc. County Cmrs
	NC League of Municipalities
Dick Carlton	attorney
	BPMTL
Lena Horne	TCM
Ken Melton	NC. D.O.R.
	NC DOC
	NC State Ports Authority Bd

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Shanon Miller	CUCA
Lisa Hennedy	Rep Stephen LaRoque
Kathleen Edwards	UNC-CH Institute of Gov't
[illegible] Peters	HP Assoc
Julie Bradford	All About Beer, Durham
Jean Wilson	Pop The Cap
Steve Davis	Carolina Beer + Bev.
John Cyrus	NCSG
Jon Carr	NC Assoc. ABC Boards
[illegible]	NCRA - LBC
Bill Wells	NC Telco Alliance

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Alissa Dolan	NC Conservation Network
Gary Harris	NC Petroleum Marketers Association
Chris Kukla	Self-Help
Al Ripley	NC Justice Ctr.
R. Paul Wilms	NCHBA
Brad Adcock	BCBSNC
David Fox	Allen Assoc.
John McKay	Gov office
Roz Savitt	NCCCC
Michael Hoover	NCAE
Bob Sorrow	NC Forestry Assoc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Breeden Robinson	Citizens for a Free Land
Kathy Hawkins	Progress Energy
Dean Plunkett	NCBWWA
Andy Elkin	NCRWA
Ken Howell	Gov's office
Lee Hodge	KCLH

SENATE COMMERCE COMMITTEE
Tuesday, July 12, 2005
Senate Chamber

MINUTES

The Senate Commerce Committee met at 2:30 p.m. on July 12, 2005, in the Senate Chamber. Ten members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Mr. Walker Reagan, Counsel to the Committee, to explain HB 1429, Wine Shipper Fee/Wine Primary Source. Senator Martin Nesbitt moved a favorable report of the bill. The bill is sequentially referred to the Finance Committee. The motion carried.

The meeting adjourned at 2:40 p.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 12, 2005

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

FAVORABLE

H.B.(CS #2) **1429** Wine Shipper Fee/Wine Primary Source
Sequential Referral: Finance
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1429

Committee Substitute Favorable 5/18/05
Committee Substitute #2 Favorable 6/22/05
Fourth Edition Engrossed 6/29/05

Short Title: Wine Shipper Fee/Wine Primary Source. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR RECIPROCITY BY ELIMINATING THE APPLICATION FEE FOR A WINE SHIPPER PERMIT, TO REQUIRE THE DESIGNATION OF A PRIMARY SOURCE FOR THE IMPORTATION OF WINE INTO THE STATE, TO CLARIFY THE LAW CONCERNING SPLIT-CASE FEES, AND TO TRANSFER THE NORTH CAROLINA GRAPE GROWERS COUNCIL TO THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.

(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.
(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.
~~(36) Wine shipper permit – $100.00.~~"

SECTION 2. G.S. 18B-1001.1(a) reads as rewritten:

"(a) A winery holding a federal basic wine manufacturing permit located within or outside of the State may apply to the Commission for issuance of a wine shipper permit that shall authorize the shipment of brands of fortified and unfortified wines identified in the application. The applicant shall not be required to pay an application fee for the wine shipper permit. A wine shipper permittee may amend the brands of wines identified in the permit application but shall file any amendment with the Commission. Any winery that applies for a wine shipper permit shall notify in writing any wholesalers that have been authorized to distribute the winery's brands within the State that an application has been filed for a wine shipper permit. A wine shipper permittee may sell and ship not more than two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be lawfully sold. All sales and shipments shall be for personal use only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine."

SECTION 3. G.S. 18B-203(a) reads as rewritten:

"(a) Powers. – The Commission shall have authority to:

...

(19) Recognize the holder of a wine importer permit or nonresident wine vendor permit as a primary American source of supply, for the wine of a winery. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written

contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 4. G.S. 18B-1106 reads as rewritten:

"**§ 18B-1106. Authorization of wine importer permit.**

(a) Authorization. – The holder of a wine importer permit may:

(1) Import fortified and unfortified wines from outside the United States in closed containers;

(2) Store those wines;

(3) Sell those wines to wine wholesalers for purposes of resale.

(b) Distribution Agreements. – Wine distribution agreements are governed by Article 12 of this Chapter.

(c) The holder of a wine importer permit may import and sell to wholesalers only wine for which it is a primary American source of supply. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 5. G.S. 18B-1107 reads as rewritten:

"**§ 18B-1107. Authorization of wine wholesaler permit.**

(a) Authorization. – The holder of a wine wholesaler permit may:

(1) Receive, possess and transport shipments of fortified and unfortified ~~wine;~~wine. The wine must be received from one of the following:

a. A primary American source of supply for that wine as recognized by the Commission or as verified by the wholesaler.

b. A licensed North Carolina wholesaler who received the wine from a primary American source of supply and with whom the second wholesaler has a subcontracting agreement for distribution of the wine.

c. Another wholesaler from whom the purchasing wholesaler is purchasing the wholesaler's business or from whom the wholesaler is purchasing the brand or distribution rights for the wine being received.

d. Another wholesaler who also has distribution rights for the wine being received and from whom the wholesaler is acquiring the wine in order to address a temporary inventory shortage.

(2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC ~~laws;~~laws.

(3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of ~~Revenue;~~Revenue.

(4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the ~~Commission;~~Commission.

(5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits, provided that each bottle is marked "out-of-date" by the wholesaler.

(b) Distribution Agreements. – Wine distribution agreements are governed by Article 12 of this Chapter."

SECTION 6. G.S. 18B-1114 reads as rewritten:

"**§ 18B-1114. Authorization of nonresident wine vendor permit.**

The holder of a nonresident wine vendor permit may sell, deliver, and ship unfortified and fortified wine in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The unfortified and fortified wine must come to rest at the licensed premises of a wine wholesaler in this State before being resold to a retailer. A nonresident wine vendor permit may be issued to a winery, a wholesaler, an importer, or a bottler outside North Carolina who desires to sell, deliver, and ship unfortified and fortified wine into this State. The holder of a nonresident wine vendor permit may sell, deliver, and ship into this State only wine for which it is a primary American source of supply. To be considered a primary American source of supply, a nonresident wine vendor must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 7. G.S. 18B-1116 is amended by adding a new subsection to read:

"(c) As used in this section, the phrase "giving things of value" shall not include the dividing or removing of individual containers of alcohol from larger packages of alcohol or the delivery of such to the retail permittee."

SECTION 8.(a) Article 62 of Chapter 106 of the General Statutes is recodified as Part 2H of Article 10 of Chapter 143B of the General Statutes and reads as rewritten:

"~~Article 62.~~

"Part 2H. Grape Growers Council.

"§ ~~106-750.~~143B-437.70. **North Carolina Grape Growers Council – Creation; powers and duties.**

There is created the North Carolina Grape Growers Council of the Department of ~~Agriculture and Consumer Services.~~Commerce. The North Carolina Grape Growers Council shall have the following powers and duties:

(1) To identify and implement methods for improving North Carolina's rank as a wine-producing State;

(2) To assure orderly growth and development of North Carolina's grape and wine industry;

(3) To achieve public awareness of the quality of North Carolina grapes and wine;

(4) To coordinate the interaction of North Carolina's grape and wine industry with other segments of the State's economy such as tourism, retail trade, and horticulture;

(5) To conduct methods of quality assurance of North Carolina's grape and wine industry to create a sound foundation for further growth;
(6) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the grape and wine industry;
(7) To receive and disburse funds;
(8) To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;
(9) To contract for research services to improve viticultural and enological practices in North Carolina;
(10) To enter into agreements with any local, state, or national organizations or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;
(11) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina grape and wine industry;
(12) To acquire any licenses or permits necessary for performance of the duties of the Council; and
(13) To develop a State Viticulture Plan that identifies problems and constraints of the viticultural industry, proposes solutions to those problems and delineates planning mechanisms for the orderly growth of the industry.

"§ ~~106-751.~~143B-437.71. **North Carolina Grape Growers Council – Composition; terms; reimbursement.**

(a) The North Carolina Grape Growers Council shall consist of 11 members appointed by the ~~Commissioner of Agriculture~~Secretary of Commerce in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars ($10,000) worth of grapes annually. The ~~Commissioner~~ Secretary shall ~~appoint, within 30 days of the effective date of this act, four members for three-year terms, four members for two-year terms, and three members for one-year terms. Thereafter, members shall be appointed for~~appoint members for staggered four-year ~~terms and~~ terms. ~~Members~~ shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the Council may be removed by the ~~Commissioner~~ Secretary for misfeasance, malfeasance, or nonfeasance.

(b) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the operation of the Council.

(c) All clerical and other services required by the Council may be provided by the Department of ~~Agriculture and Consumer Services.~~Commerce.

(d) The ~~Commissioner of Agriculture~~Secretary of Commerce shall appoint a ~~chairman~~ chair who shall serve at the pleasure of the ~~Commissioner.~~Secretary.

(e) The Council may select a secretary who need not be a member of the Council.

(f) The Council shall meet when necessary as determined by the ~~chairman~~ chair or upon written request of a majority of the members.

(g) A majority of the Council shall constitute a quorum for the transaction of business."

SECTION 8.(b) Persons serving on the North Carolina Grape Growers Council as of the effective date of this section shall continue to serve for the remainder of their unexpired terms. The Secretary of Commerce shall appoint members to the North Carolina Grape Growers Council as current terms expire and as vacancies arise.

SECTION 8.(c) G.S. 105-113.81A reads as rewritten:

"**§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.**

The Secretary shall on a quarterly basis credit to the Department of ~~Agriculture and Consumer Services~~Commerce the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, except that the amount credited to the Department of ~~Agriculture and Consumer Services~~Commerce under this section shall not exceed three hundred fifty thousand dollars ($350,000) per fiscal year. The Department of ~~Agriculture and Consumer Services~~Commerce shall allocate the funds received under this section to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. Any funds credited to the Department of ~~Agriculture and Consumer Services~~Commerce under this section that are not expended by June 30 of any fiscal year may not revert to the General Fund, but shall remain available to the Department for the uses set forth in this section."

SECTION 8.(d) The Department of Commerce shall consult and coordinate with the Department of Agriculture and Consumer Services and North Carolina State University to serve the needs of North Carolina grape growers.

SECTION 9. This act is effective when it becomes law, and Sections 1 and 2 of this act apply to wine shipper permit applications submitted on or after that date.

HOUSE BILL 1429:
Wine Shipper Fee/Wine Primary Source

BILL ANALYSIS

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	July 12, 2005
Introduced by:	Reps. Harrell, Gibson	**Summary by:**	O. Walker Reagan
Version:	Fourth Edition		Committee Co-Counsel

SUMMARY: House Bill 1429 would do the following:

- ***Eliminate the application fee for a wine shipper permit.***
- ***Require the Alcoholic Beverage Control Commission to recognize a wine importer as the primary source of supply for the wine of a winery and to prohibit wine wholesalers from receiving, possessing, or transporting wine from any source other than the recognized primary source.***
- ***Transfer the North Carolina Grape Growers Council from the Department of Agriculture to the Department of Commerce.***

Sections 1, 2 and 8 of House Bill 1429 passed the Senate earlier this session as part of Senate Bill 828 introduced by Senator Hagan.

CURRENT LAW: After the end of Prohibition in the 1930s, North Carolina adopted laws to prohibit the importation of wine and other alcoholic beverages except through a highly regulated system. The structure of the ABC system is a three-tiered system. Under this system, an out-of-state producer of wine may sell its products in North Carolina to licensed wholesalers only. Wholesalers may in turn sell the products to other wholesalers or to licensed retailers. Only licensed retailers may sell the products to consumers.

In 1981, the General Assembly enacted an exception to this three-tiered structure. Under that exception, North Carolina wineries were allowed to sell and ship wine directly to North Carolina consumers. This exception did not extend to out-of-state wineries. In 2002, a federal district court held in *Beskind v. Easley*,[1] that this exemption violated the Commerce Clause of the United States Constitution because it clearly favored in-state economic interests over out-of-state interests. . North Carolina appealed this decision to the federal Court of Appeals. That court upheld the holding.[2]

To remedy the unconstitutional exception in the State's ABC law, the General Assembly was left with the option of repealing the exemption for in-state wineries or allowing shipments from out-of-state wineries on the same basis as for in-state wineries. S.L. 2003-402 created a new permit under the ABC laws that would allow any winery to ship wine directly to individuals in North Carolina and it provides a mechanism for the collection of excise and sales and use taxes on direct shipments of wine.[3] Under that act, any winery that holds a federal basic wine manufacturer permit may apply for a North Carolina wine shipper permit for a fee of $100. The annual renewal fee is $25.[4]

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[1] 197 F.Supp.2d 464 (W.D. NC, 2002). The United States Supreme Court upheld a similar case in *Granholm v. Heald*, decided May 16, 2005, No. 03-1116.

[2] 325 F.3d 506 (4th Cir., 2003)

[3] The State is able to establish sufficient nexus with an out-of-state winery to require its collection of the State's taxes by requiring the acquisition of a wine shipper permit.

[4] G.S. 18B-903 provides that ABC permits are valid for one year, May 1 to April 30, and that the renewal fee is 25% of the original application fee.

The North Carolina Grape Growers Council is currently created in the Department of Agriculture and Consumer Services. The NC Grape Growers Council is to promote and provide for the growth and development of NC's grape and wine industry. The Council is funded by $350,000 collected from the excise tax collected on unfortified wine bottled in NC.

BILL ANALYSIS: Sections 1 and 2 of House Bill 1429 would eliminate the one-time wine shipper permit application $100 fee, and subsequently the annual renewal fee, for the wine shipper permit.

Sections 3 through 6 would require the ABC Commission to recognize only one wine importer permittee as the source for wines from a winery. It would prohibit wine importers from importing or selling to wholesalers wine for which it is not the recognized source of supply and it would prohibit wine wholesalers from receiving, possessing, or transporting shipments of wine from an importer that is not the recognized source of supply. It also expands the protection of wine distribution agreements to these sales by amending the definition of 'winery' to include the holder of a 'wine importer permit'.

Section 7 adds a clarifying definition to the statute defining prohibited activities for alcoholic beverages manufacturers, bottlers, or wholesalers to exclude the dividing of larger packages of alcohol from the definition of "giving things of value".

Section 8 would transfer the North Carolina Grape Growers Council from the Department of Agriculture and Consumer Services to the Department of Commerce. The Secretary of Commerce would replace the Commissioner of Agriculture as the appointing authority of members of the Council. The Secretary would appoint new members as current members' terms expire or as vacancies arise. The Department of Revenues is directed to pay the $350,000 annual payment from excise tax revenues collected on unfortified wine bottled in the State to the Department of Commerce instead of to the Department of Agriculture, for the benefit of the Council. The Department of Commerce is to work with the Department of Agriculture and North Carolina State University to serve the needs of grape growers.

EFFECTIVE DATE: The bill is effective when it becomes law and applies to wine shipper permit applications submitted on or after that date.

Cindy Avrette, counsel to the House Finance Committee, substantially contributed to this summary.

H1429e4-SMRU

2005

SENATE
COMMERCE

COMMITTEE
MINUTES

Senate Commerce Committee
Wednesday, August 10, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 384	NC Energy Policy Rewrite.	Senator Horton
HB 576	Simply Bid Process/Small Comm. Coll. Projects.	Representative England Representative Tolson Representative Sauls
HB 630	Manufactured Homes Escrow Accounts.	Representative Goforth
HB 669	Oversize/Overweight Vehicle Changes.-AB	Representative Cole
HB 810	Amend Certain Land Surveyor Licensure Reqs.	Representative Gibson, III Representative Gillespie
HB 1261	Wireless Telephone Service.	Representative Underhill
HB 1284	Improve Real Estate Licensing Law.	Representative Brubaker Representative Howard Representative Culpepper
HB 1416	An Act to Amend the ABC Election Law.	Representative Haire
HB 1539	UNC/Amend Umstead Act.	Representative Yongue Representative Brubaker Representative Haire Representative Daughtridge
HB 1541	Homeowner Association Amendments.	Representative Earle Representative Barnhart Representative Weiss Representative Stam

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Wednesday, August 10, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on August 10, 2005, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R.C. Soles, Jr., presided. He introduced the pages: Nicole Mills from Raleigh, sponsored by Senator Neal Hunt; and Chris Wiles from Prospect Hill, sponsored by Senator Hugh Webster.

Senator Soles recognized Representative Martha Alexander to explain HB 891, Master Keys/Lock-Picking Devices Regulated. Senator David Hoyle moved for a favorable report of the bill. The motion carried.

Senator Soles recognized Senator Hamilton Horton to explain SB 384, NC Energy Policy Rewrite. Senator Tony Rand moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Katie Dorsett moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill, with a referral to the Appropriations/ Base Budget Committee. The motion carried.

Senator Soles recognized Representative Bill Culpepper to explain HB 1284, Improve Real Estate Licensing Law. Senator Rand moved the adoption of a committee substitute for purposes of discussion. The motion carried. The bill was sponsored by Representative Culpepper on behalf of the Real Estate Commission. Senator Tom Apodaca moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Senator Martin Nesbitt to explain HB 630, Manufactured Homes Escrow Accounts, on behalf of Representative Bruce Goforth. Senator Rand moved the adoption of a committee substitute for purposes of discussion. The motion carried. The committee substitute substantially changed the bill as it came over from the House. Mr. Bill Rowe, representing the NC Justice Center, explained the differences between HB 630 and a proposed rule. Senator Nesbitt moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. Mr. Frank Gray, representing the NC Manufactured Housing Association, said the industry supports the concept of escrow but prefers the proposed administrative rule because it is more flexible, however he is concerned because of the additional provisions of the bill that he has not had an opportunity to study. Therefore, the Association opposes the bill. Other members addressed their concern with the changes they did not have an opportunity to study prior to the meeting. Senator Soles removed the bill from consideration.

Senator Soles recognized Representative Joe Tolson to explain HB 576, Simply Bid Process/Small Comm. Coll. Projects. Senator Tom Apodaca moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Richard Stevens moved an unfavorable report of the bill, but favorable report as to the Senate Committee Substitute bill. Mr. Dave Simpson, representing the Carolinas Associated General Contractors, spoke in opposition to the bill. The motion carried.

Senator Soles recognized Representative Phil Haire to explain HB 1416, An Act to Amend the ABC Election Law. Senator Nesbitt moved a favorable report of the bill. Rev. Mark Creech,

Executive Director of the Christian Action League of North Carolina spoke against the bill. The motion carried.

Senator Soles recognized Representative Alice Underhill to explain HB 1261, Wireless Telephone Service. Senator Linda Garrou moved the adoption of a committee substitute for discussion purposes. The motion carried. Mr. Steve Rose, Committee Counsel, explained portions of the bill. Mr. Layton Lang, representing Track Phone Wireless, spoke against the provisions of the bill that concerned pre-paid telephone cards. Mr. Richard Taylor, representing the NC Wireless 911 Board, spoke in favor of the bill and explained the provisions of the bill further. Mr. Jason Barber, 911 Director for Johnston County, spoke to Section 9 of the bill concerning the use of 911 funds for education of 911 operators. Senator Garrou moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill, with a recommended referral to the Finance Committee. The motion carried.

Senator Soles recognized Representative Nelson Cole to explain HB 669, Oversize/Overweight Vehicle Changes. Senator Rand moved the adoption of a committee substitute for discussion purposes. The motion carried. After Representative Cole explained most of the bill, Ms. Wendy Ray, Committee Counsel, explained the new Section 3. Senator Walter Dalton sent forth an amendment and moved its adoption. The motion carried. Senator Clark Jenkins explained Section 3 further. Ms. Tammy Denning, Director of the Oversize/Overweight Office, DMV, was called on to speak to a question about the levels of fines for overweight trucks. Martin Nichols, State Highway Patrol, was called on to speak to a question about protesting overweight tickets. Mr. Lyndo Tippett, Secretary of the Department of Transportation, spoke against Section 3 because of the cost to the Department of repairs from overweight vehicles. Mr. Steve , Chief Engineer of Operations of the Department, also spoke in opposition to the provision of Section 3. Mr. Paul Wilms, representing the NC Homebuilders Association, spoke in favor of the Section. Senator David Hoyle moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

The meeting adjourned at 12:10 p.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, August 10, 2005

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

FAVORABLE

H.B.(CS #1) **891** Master Keys/Lock-Picking Devices Regulated.
Sequential Referral: None
Recommended Referral: None

H.B. **1416** An Act to Amend the ABC Election Law.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, August 10, 2005

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

FAVORABLE

H.B. **665** Amend House Mover Laws.-AB
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **687** Pirating Movies.
Sequential Referral: None
Recommended Referral: None

H.B. **810** Amend Certain Land Surveyor Licensure Reqs.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1240** Vacation Rental Act Amendments.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1299** Motor Vehicle Repairs/Clarify Cost of Repair.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1464** Repeal Sunset on UNC Design Contracts/Report.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **576** Simply Bid Process/Small Comm. Coll. Projects.
Draft Number: PCS 70550
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **669** Oversize/Overweight Vehicle Changes.-AB

Draft Number:	PCS 30365
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1261** Wireless Telephone Service.

Draft Number:	PCS 60526
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 9

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, August 10, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **670** CDL/Federal Compliance

Draft Number:	PCS 50484
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **1174** ABC Permit Issuance and Compliance.

Draft Number:	PCS 60529
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **1284** Improve Real Estate Licensing Law.

Draft Number:	PCS 30366
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **1539** UNC/Amend Umstead Act.

Draft Number:	PCS 70552
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 891*
Committee Substitute Favorable 4/12/05

Short Title: Master Keys/Lock-Picking Devices Regulated. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE POSSESSION OF MOTOR VEHICLE MASTER KEYS AND OTHER MOTOR VEHICLE LOCK-PICKING DEVICES.

The General Assembly of North Carolina enacts:

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

"**§ 14-56A. Preparation to commit breaking or entering into motor vehicles.**

(a) For purposes of this section:

(1) "Manipulative key" means a key, device or instrument, other than a key that is designed to operate a specific lock, that can be variably positioned and manipulated in a vehicle keyway to operate a lock or cylinder or multiple locks or cylinders, including a wiggle key, jiggle key, or rocket key.

(2) "Master key" means a key that operates all the keyed locks or cylinders in a similar type or group of locks.

(b) It is unlawful for any person to possess any motor vehicle master key, manipulative key, or other motor vehicle lock-picking device or hot wiring device, with the intent to commit any felony, larceny, or unauthorized use of a motor propelled conveyance.

(c) It is unlawful for a person to willfully buy, sell, or transfer a motor vehicle master key, manipulative key or device, key-cutting device, lock pick or lock-picking device, or hot wiring device, designed to open or capable of opening the door or trunk of any motor vehicle or of starting the engine of a motor vehicle for use in any manner prohibited by this section.

(d) Violation of this section is a Class 1 misdemeanor. A second or subsequent violation of this section is a Class I felony.

(e) This section shall not apply to any person who is a dealer of new or used motor vehicles, a car rental agent, a locksmith, an employee of a towing service, an employee of an automotive repair business, a person who is lawfully repossessing a

vehicle, or a state, county, or municipal law enforcement officer, when that person is acting within the scope of the person's official duties or employment. This section shall not apply to a business which has a key-cutting device located and used on the premises for the purpose of making replacement keys for the owner or person who is in lawful custody of a vehicle."

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

SENATE BILL 384:
NC Energy Policy Rewrite

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	August 10, 2005
Introduced by:	Sen. Horton	**Summary by:**	Steven Rose
Version:	PCS S384-CSRL-40		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for SB 384 rewrites and updates the Energy Policy Act of 1975. The new Act consolidates four plans the Energy Policy Council was charged with creating and updating for recommendation to the Governor into a single comprehensive State Energy Plan. The 18 member Council is reduced to 15 members. The Council will no longer have General Assembly Members serving. Numerous other changes are made to modernize the Act. The act appropriates funds from the General Fund to the Department of Administration for both fiscal years of the biennium to be used for the transition and reorganization of the Energy policy Council.***

BILL ANALYSIS: A chart set out below shows a comparison of the current Energy Policy Act to the Energy Policy Act as revised by SB 384. The appropriation is found in Section 5 of the bill. $500,000 for 2005-2006 and $750,000 for 2006-2007.

EFFECTIVE DATE: The act becomes effective January 1, 2006, except for the appropriation which is effective July 1, 2005.

BACKGROUND: The Energy Policy Act of 1975 was enacted in response to the energy crisis that occurred in the early 1970s, sparked by the Arab oil embargo. During that time, spikes in the cost of energy were common and long lines at gas stations were a daily occurrence. The Energy Policy Act was intended to provide energy planning for the State and a method of dealing with energy emergencies. It has not been comprehensively updated since its enactment.

COMPARISON CHART OF CHANGES PROPOSED BY SB 384
Current Chapter 113B Compared to Proposed Chapter 113C

CURRENT STATUTE	*SUMMARY*	*PROPOSED STATUTE*	*CHANGES*
113B-1	**Legislative findings and purpose.** States the importance of energy to the State; the factors that have contributed to the growth of energy consumption and will continue to do so in the future; that the State should encourage conservation of energy resources; that the State has not provided proper guidance in energy conservation; that it is the intent of this Chapter to develop a unified energy policy for the State.	**113C-1**	**Similar, but specifies the need for a long-range energy policy that will ensure supply, improve public health and the environment, promote wise land use, support sound economy, and be sustainable.**
113B-2	**Creation of the Energy Policy Council.** Creates the Energy Policy Council within the Department of Administration, to make	**113C-2**	**Similar purposes.**

	recommendations to the Governor and the General Assembly on Energy Policy.		
113B-3	**Composition of Council:** Council consists of 18 members: 2 members of the House; 2 members of the Senate (two year terms); 9 public members appointed by the Governor (four year terms); the Chair of the Utilities Commission, the Secretary of Environment and Natural Resources, the Commissioner of Agriculture, the Secretary of Commerce, and the Secretary of Administration. Of the public members, one member must be experienced in each of the following areas: electric power industry, natural gas industry, petroleum marketing industry, economic analysis of energy requirements, environmental protection, industrial energy consumption. One member must be knowledgeable of alternative sources of energy, one member must be a current county commissioner, and one member must be an elected municipal official.	**113C-3**	**Council is reduced to 15 members. The members from the General Assembly are eliminated (to avoid separation of powers issues) and the number of public members is increased to ten by adding a new member that must be knowledgeable in energy efficient technology and related energy-conservation measures. The terms of the public members are made staggered four-year terms.**
113B-4	**Chairman of Council; replacement; reimbursement of members.** The Governor shall designate a Chair of the Council every four years from among its membership. In the case of a vacancy prior to the expiration of a member's term, the appropriate individual as noted in G.S.113B-3 shall have 30 days to appoint a successor to fill the remainder of the term. The members of the Energy Policy Council shall be reimbursed for their services pursuant to G.S. 138-5.	**113C-4**	**NO CHANGE**
113B-5	**Organization of the Council; adoption of rules of procedures.** The Chair of the Council, with the consent of the members may adopt such rules necessary to carry out its duties as prescribed in this Chapter; shall adopt its own rules of procedure and regularly meet at such times and places it deems necessary to carry out its functions; and is authorized to create such advisory committees as necessary to assist the Council in its efforts and to help implement recommendations.	**113C-5**	**Restriction on members of advisory committees serving past the terms of then present council members is eliminated.**

113B-6	**General duties and responsibilities.** The Energy Policy Council shall recommend to the Governor a long-range energy policy; conduct ongoing assessments of the opportunities and constraints presented by all various forms of energy; continually review and coordinate all State government energy research; recommend to the Governor and General Assembly needed energy legislation and modifications to current policy; and develop and administer the Low-Income Residential Energy Program.	**113C-6**	**Adds description of Low-Income Residential Energy Program.** **Relocate three duties of Council from 113B-10 (c), (d), and (e) since these are not part of the consolidated State Energy Plan (as (5), (6), and (7)).**
113B-7	**Energy Efficiency Programs.** The Council shall recommend an Energy Efficiency Program to the Governor designed to assure the public health and safety of the people of N.C. and to encourage energy conservation.	**113C-8 (a) and (b)**	**Consolidated into an overall State Energy Plan.** **Deletes last sentence of 113B-7(e), an unnecessary statement of Governor's authority.**
113B-8	**Energy Management Plan.** The Council shall prepare an Energy Management Plan designed to encourage the most efficient use of all sources of energy.	**113C-8 (c)**	**Consolidated into an overall State Energy Plan. Delete 113B-8 (g) and (h) as unnecessary statements of Governor's authority. 20-year forecast is dropped.**
113B-9	**Emergency Energy Program.** The council shall develop an Emergency Energy Program comprised of contingency and emergency plans to deal with a possible shortage of energy to protect public health, safety, and welfare	**113C-8 (d)**	**Consolidated into an overall State Energy Plan.** **Delete 113B-9 (k) as unnecessary statement of Governor's authority.** **Moved 113B-9(b)(1) and (2) to 113C-13(d).**
113B-10	**Energy Research and Development Program; information gathering; coordination of energy research and**	**113C-8 (e)**	**Consolidated into an overall State Energy Plan as**

	planning. The council shall encourage, develop, and coordinate research pertaining to energy conservation and management and the development of alternative energy technologies.		**113C-8(e).** **Relocate three duties of Council from 113B-10 (c), (d), and (e) (since these are not part of the consolidated State Energy Plan) to 113C-6.**
113B-11	**Powers and Authority.** The Council is authorized to secure from any governmental entity of the State any information it deems necessary to carry out it's functions. Council may require energy producers and major consumers to file such reports necessary to carry out its duties.	**Moved to 113C-7**	**(1) Provision (f) added that states that annual funding for the State Energy Office may be provided from General Fund appropriations administered by Dept. of Administration.**
113B-12	**Annual reports.** Every year the council shall transmit to the Governor, Speaker of the House, President Pro Tempore of the Senate, Chair of the Utilities Commission and the appropriate Chairs of the House and Senate Committees concerned with energy matters, a comprehensive report providing a general overview of energy conditions in the State.	**113C-9**	**Adds the Joint Legislative Utility Review Committee and the Environmental Review Commission to the list of agencies/persons to whom an annual report is required to be given. It excludes General Assembly appropriate House and Senate Committee Chairs from this list. Contents of the annual report are revised to accommodate the consolidation of the various energy plans and programs into the State Energy Plan.**
113B-13 –	**Reserved for future codification**	**NOT USED**	

113B-19	**purposes.**	**IN NEW CHAPTER**	
113B-20	**Definition; declaration of energy crisis.** Defines "energy crisis" and empowers the Governor to declare an energy crisis if criteria is met.	**113C-10**	**Revised to clarify. Substance is same.**
113B-21	**Creation of Legislative Committee on Energy Crisis Management.** Creates a committee comprised of the Speaker of the House (as chair), the Speaker Pro Tempore of the House, the President Pro Tempore of the Senate, and the Senate Majority Leader, with the Lieutenant Governor as a nonvoting member, voting only to break a tie. Shall meet within 24 hours after the declaration of an energy crisis by the Governor.	**113C-11**	**Revised to clarify. Substance is same.**
113B-22	**Procedures for adopting emergency proposals; emergency powers.** Governor shall submit to Legislative Committee such emergency orders as deemed necessary to alleviate the effects of the crisis. The Governor may consult with the committee. The emergency orders shall become effective at a time specified by the Governor but no earlier than 48 hours after submission to the Legislative Committee. No order under this provision shall remain effective for more than 30 days unless Governor consults with the committee.	**113C-12**	**Adds water and air quality to the list of items that may be considered in Governor's emergency rules.**
113B-23	**Administration of plans and recommendations.** Upon declaration of an energy crisis, the Energy Policy Council shall become the emergency coordinating body for the State and shall determine the nature and severity of the shortages, provide for daily communication with energy providers, and provide data and continuing assessments of the situation.	**113C-13**	**Various technical corrections. Moved 113B-9(b) (1) and (2) to 113C-13(d) and added provision that major renewable and alternative energy providers (in addition to electricity, natural gas and oil providers) shall assess stock and shall inventory available facilities and resources and submit information to the Council.**
113B-24	**Enforcement; penalties for violations.**	**113C-14**	**Minor technical**

	The Attorney General shall enforce all the provisions of this Article. Violators of this Article or any emergency rules are guilty of a Class 1 misdemeanor.		**changes.**

This chart was prepared with the assistance of Dickie Brown, Research Assistant, and Sharon Stroud, of the State Energy Office.

Revised July 11, 2005

S0384e1-SMRL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 384*

Short Title:	NC Energy Policy Rewrite.	(Public)
Sponsors:	Senators Horton and Kinnaird.	
Referred to:	Commerce.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE NORTH CAROLINA ENERGY POLICY ACT OF 1975.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 113B-8(a), G.S. 113B-8(b), G.S. 113B-8(d) through G.S. 113B-8(f), G.S. 113B-9(e), G.S. 113B-9(i), and G.S. 113B-9(j) are repealed.

SECTION 1.(b) G.S. 113B-7 through G.S. 113B-10, as amended by subsection (a) of this section, are recodified as G.S. 113B-10.1, except that G.S. 113B-8(g) and G.S. 113B-8(h) are recodified as G.S. 113B-11(g) and G.S. 113B-11(h) respectively; G.S. 113B-9(b) is recodified as G.S. 113B-23(d); and G.S. 113B-9(k) is recodified as G.S. 113B-11(i).

SECTION 1.(c) G.S. 113B-7(a) through G.S. 113B-7(c) become G.S. 113B-10.1(a) through G.S. 113B-10.1(c). G.S. 113B-8(c) becomes G.S. 113B-10.1(d). G.S. 113B-9(a) becomes G.S. 113B-10.1(e). G.S. 113B-9(c) and G.S. 113B-9(d) become G.S. 113B-10.1(f) and G.S. 113B-10.1(g), G.S. 113B-9(f) through G.S. 113B-9(h) become G.S. 113B-10.1(h) through G.S. 113B-10.1(j), G.S. 113B-10(a) through G.S. 113B-10(e) become G.S. 113B-10.1(k) through G.S. 113B-10.1(o). G.S. 113B-7(d) through G.S. 113B-7(g) become G.S. 113B-10.1(p) through G.S. 113B-10.1(s).

SECTION 2. Chapter 113B of the General Statutes, as amended and recodified by Section 1 of this act, reads as rewritten:

"**Chapter 113B.**

"**North Carolina Energy Policy ~~Act of 1975.~~ Act.**

"Article 1.

"Energy Policy Council.

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future ~~social, economic and environmental development~~ social and economic development and the future environmental quality of North ~~Carolina;~~Carolina.

(3) It is the responsibility of State government to encourage a reliable and adequate supply of energy for North Carolina at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion of the general ~~welfare; and~~welfare.

(4) The State ~~has not provided the basis for development of~~needs a long-range unified energy policy to ~~encompass comprehensive energy resource planning and efficient management of the rate of consumption of existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of energy, and to prudently conserve energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North Carolina.~~ensure the availability of reliable energy in the State, to improve the public health and the environmental quality of the State, to promote wise land use, support a sound economy of the State, to achieve a sustainable energy strategy for the State, and to provide a means by which State government leads the State by its example.

(5) It is the expressed intent of this Chapter to provide for development of such a unified energy policy for the State of North Carolina.

"**§ 113B-2. Creation of Energy Policy Council; purpose of Council.**

(a) There is hereby created a council to advise and make recommendations on energy policy to the Governor and the General Assembly to be known as the Energy Policy Council which shall be located within the Department of Administration.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy Policy Council shall be as prescribed by the Secretary of Administration.

(c) The Energy Policy Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy.

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Policy Council shall consist of 18 members to be appointed as follows:

(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;

(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;

(3) Nine public members who are citizens of the State of North Carolina to be appointed by the Governor;

(4) The chairman of the North Carolina Utilities Commission, the Secretary of Environment and Natural Resources, the Commissioner of Agriculture, the Secretary of Commerce and the Secretary of Administration or their designees from their respective departments.

(b) ~~Initial appointments to the Energy Policy Council shall be made by July 15, 1975, and each such appointee shall serve until January 31, 1977. Thereafter, the~~The appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.

(c) The public members of the Energy Policy Council shall have the following qualifications:

(1) One such member shall be ~~experienced~~ knowledgeable in the electric power ~~industry;~~industry.

(2) One such member shall be ~~experienced~~ knowledgeable in the natural gas ~~industry;~~industry.

(3) One such member shall be ~~experienced~~ knowledgeable in the petroleum marketing ~~industry;~~industry.

(4) One such member shall be ~~experienced~~ knowledgeable in economic analysis of energy ~~requirements;~~requirements.

(5) One such member shall be ~~experienced~~ knowledgeable in environmental ~~protection;~~protection.

(6) One such member shall be ~~experienced~~ knowledgeable in industrial energy ~~consumption;~~consumption.

(7) One such member shall be knowledgeable ~~of~~ in alternative sources of ~~energy;~~energy.

(8) One such member who, at the time of appointment, is a county commissioner; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as a county ~~commissioner;~~commissioner.

(9) One such member who, at the time of appointment, is an elected municipal official; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as an elected municipal official.

"**§ 113B-4. Chairman of Council; replacement; reimbursement of members.**

(a) ~~On July 15, 1975, on January 31, 1977, and every four years thereafter, the~~Every four years, the Governor shall designate one of the members of the Energy Policy Council to serve as chairman of the Council.

(b) In case of a vacancy in the membership on the Energy Policy Council prior to the expiration of a member's term, a successor shall be appointed within ~~30~~ 90 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy Policy Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

"**§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.**

(a) To facilitate the work of the Energy Policy Council and for administrative purposes, the chairman of the Energy Policy Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy Policy Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy Policy Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council.

"**§ 113B-6. General duties and responsibilities.**

The Energy Policy Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor a comprehensive long-range State ~~energy policy~~Energy Plan to achieve maximum effective management and use of present and future sources of ~~energy, such policy to~~ energy. The State Energy Plan shall include but not be limited to ~~an energy efficiency program, an energy management plan, an emergency energy program, and an energy research and development program;~~ components that address energy efficiency, energy analysis and assessment, contingency and energy emergency planning, and energy research and development.

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy matters and to continually educate and inform the general public regarding such energy ~~matters;~~matters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modifications of energy policy, plans and programs as the Council considers necessary and desirable.

(5) To develop and administer the Low-Income Residential Energy Program. Nothing in this subdivision shall be construed as obligating the General Assembly to appropriate funds for the Program or as entitling any person to services under the Program.

"**§ 113B-10.1. State Energy Plan; components.**

(a) The Energy Policy Council shall prepare a recommended ~~Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30,~~

~~1976.~~ State Energy Plan. The State Energy Plan shall include recommendations that address at least all of the following:

(1) Energy efficiency.

(2) Energy analysis and assessment.

(3) Contingency and energy emergency planning.

(4) Energy research and development.

(b) The ~~Energy Efficiency Program~~ recommendations included in the energy efficiency component of the State Energy Plan shall be designed to ~~assure~~ ensure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy ~~through~~ by reducing wasteful, ~~inefficient~~ inefficient, or uneconomical uses of energy resources.

(c) The ~~Energy Efficiency Program~~recommendations in the State Energy Plan that address energy efficiency shall include but not be limited to the ~~following recommendations:~~following:

(1) Recommendations to the Building Code Council for ~~lighting, insulation, climate control systems and other~~ building design and construction standards ~~which~~ that increase the efficient use of energy and water and are economically feasible to ~~implement;~~implement.

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings ~~which~~ that would reduce energy consumption, yet are both technically and economically feasible and not injurious to public ~~health and safety;~~health, productivity, and safety.

(3) Recommendations for minimum levels of operating efficiency for all ~~appliances~~ appliances, equipment, and tools whose use requires a significant amount of energy based upon both technical and economic feasibility ~~considerations;~~considerations.

(4) Recommendations for State government purchases of supplies, ~~vehicles~~ vehicles, and equipment and such operating practices as will make possible more efficient use of ~~energy;~~energy.

(5) Recommendations on energy conservation policies, ~~programs~~ programs, and procedures for ~~local units of government;~~North Carolina energy consumers.

(6) Any other recommendations ~~which~~ that the Energy Policy Council considers to be a significant part of a statewide conservation effort and ~~which~~ that include provisions for sufficient incentives to further energy ~~conservation;~~conservation.

(7) An economic and environmental impact analysis of the recommended ~~program.~~Plan.

(d) The ~~Energy Management Plan~~ recommendations in the State Energy Plan that address energy analysis and assessment shall encourage the most efficient use of sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable, or uneconomical sources of energy. These recommendations shall include but not be limited to the following:

(1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy ~~supply;~~supply.

(2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of ~~consumption;~~consumption and its effect upon jobs.

(3) An independent analysis, in ~~five-, 10- and 20-year~~ five- and 10-year forecasts, of future energy production, supplies and consumption for North Carolina in relation to forecasts of statewide population growth and economic ~~expansion;~~expansion.

(4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the ~~State;~~State.

(5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North ~~Carolina;~~Carolina.

(6) An assessment of the social, ~~economic~~ economic, and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply ~~limitations;~~limitations.

(7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next ~~five-, 10- and 20-year~~ five- and 10-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(e) The Energy Policy Council ~~shall, in accordance with the provisions of this Article,~~ shall develop a written contingency and emergency ~~plans to deal with~~ plan that addresses possible shortages of energy in order to protect the public health, ~~safety~~ safety, and ~~welfare, such plans to be compiled into an Emergency Energy Program.~~welfare.

~~(f) The Energy Policy Council shall encourage.~~In developing the contingency and emergency plan under this subsection, the Energy Policy Council shall:

(1) Encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major ~~producers~~ producers, or by an association of such companies, the joint plans or analyses may be submitted to the Energy Policy Council in lieu of information required ~~pursuant to subsection (b) of this section.~~under G.S. 113B-23(d).

~~(g) The Energy Policy Council shall collect~~

(2) Collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

~~(h) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy.~~

(3) ~~Provisions also shall be made in said program to~~ Include provisions in the contingent and emergency plan that differentiate curtailment of energy consumption by users on the basis of ability to accommodate such ~~curtailments, and shall also include, but not be limited to, the following:~~curtailments. These provisions shall address at least all of the following:

~~(1)~~a. A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate ~~responses;~~responses.

~~(2)~~b. Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and ~~regulations;~~regulations.

~~(3)~~c. Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving ~~measures;~~measures.

~~(i) The Energy Policy Council shall carry~~

(4) Carry out ~~such~~ any investigations and studies ~~as~~ that are necessary to determine if and when potentially serious shortages of energy are likely to affect North ~~Carolina and the Council shall make~~Carolina.

(5) Make recommendations to the Governor concerning administrative and legislative actions required to avert such ~~shortages, such recommendations to be included as a section of the Emergency Energy Program.~~shortages.

~~(j) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include~~

(6) Develop procedures, ~~rules~~ rules, ~~and regulations~~ and agency administrative responsibilities ~~for implementation, and shall further contain procedures~~ to implement the contingency and emergency plan and develop procedures, to be included in the contingency and emergency plan, for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. ~~Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.~~

(k) The Energy Policy Council shall develop the research and development component of the State Energy Plan. In developing this component of the State Energy Plan, the Energy Policy Council shall ~~encourage, through its activities,~~encourage research studies and projects ~~which~~ that are related to energy conservation and management and to the development of alternative and renewable energy technologies.

~~(l)~~ ~~The~~ In addition, the Council ~~shall develop~~ shall:

(1) Develop and coordinate a statewide program of research and development in energy related matters and shall give priority in encouraging and supporting such efforts to those areas of energy research and development which are of particular importance to North Carolina.

~~(m) The Council shall serve~~

(2) Serve as the central repository within State government for the collection and storage of data and information on energy-related matters. ~~To this end the Council shall develop an energy information reporting system for use by all governmental agencies and by the general public.~~

~~(n) The Council shall review~~

(3) Review and coordinate all State agency research and planning relating to energy in an effort to reduce duplication of work and shall be the lead State agency for coordination of energy matters with local government, regional organizations, other states and the federal government.

~~(o) The Council may request~~

(4) Request and utilize the advice, information and services of all State, regional, local and federal agencies and shall cooperate with the President of the United States and all said agencies in matters relating to energy research, programs and policy.

(p) In addition to specific conservation recommendations, the ~~Energy Efficiency Program~~State Energy Plan shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended ~~program,~~Plan, the Council shall arrange for its distribution to interested parties and shall make the ~~program~~ Plan available to the public and the Council further shall ~~set a date for~~hold one or more public ~~hearing~~ hearings on ~~said program.~~the draft recommended State Energy Plan.

(q) Upon completion of the ~~Energy Efficiency Program,~~State Energy Plan, the Council shall transmit ~~said program, to be known as the State Energy Efficiency Program,~~the Plan to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United

States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(r) ~~The~~ Once the State Energy Plan is approved under subsection (q) of this section, the Governor shall transmit the ~~approved Energy Efficiency Program~~State Energy Plan to the President of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize ~~such plan~~ the State Energy Plan and make it available to all units of local government and to the public at large.

(s) At least every ~~two~~ four years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the ~~Energy Efficiency Program,~~State Energy Plan, transmitting ~~such~~ the revised plan to the Governor pursuant to the procedures contained in subsections ~~(e) and (f)~~ (q) and (r) of this section.

"**§ 113B-11. Powers and authority.**

(a) The Energy Policy Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

(b) To assure the adequate development of relevant energy information, ~~as provided in G.S. 113B-10,~~ the Council may require all energy producers and major energy consumers, as determined by the Council, to file such reports and forecasts and at such dates as the Council may request; provided, however, that the Council may request only specific energy-related information which it deems necessary to carry out its duties as defined in Articles 1 and 2 of this Chapter.

(c) The Council shall have authority to apply for and utilize grants, contributions and appropriations in order to carry out its duties as defined in Articles 1 and 2 of this Chapter, provided, however, that all such applications and requests are made through and administered by the Department of Administration.

(d) The Council shall have authority to request said Department to allocate and dispense any funds made available to the Council for energy research and related work efforts in such a manner as the Council desires subject only to the stipulation that said funds be reasonably used in furtherance of the purposes of this Article.

(e) The Department of Administration shall provide the staffing capability to the Energy Policy Council so as to fully and effectively develop recommendations for a comprehensive State ~~energy policy~~ Energy Plan as contained in the provisions of this Article. The Utilities Commission is hereby authorized to make its staff available to the Council to assist in the development of a State ~~energy policy.~~Energy Plan.

(f) Annual funding to the State Energy Office shall be provided by the Department of Administration from the General Fund.

(g) The Governor shall have the authority to accept, administer and enforce federal programs, program measures, and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to

management of energy ~~resources.~~resources and to actions necessary to deal with an actual or impending energy shortage.

(h) The Governor shall have the authority to accept, ~~administer~~ administer, and enforce the delegation of authority delegated to the State by the Emergency Petroleum Allocation Act and the Emergency Energy Conservation Act of 1979 and any orders, rules, and regulations issued pursuant to those acts as well as any succeeding federal programs, program measures, laws, orders, or regulations relating to the allocation, conservation, consumption, ~~management~~ management, or rationing of energy resources.

(i) The Governor shall have the authority to accept, ~~administer~~ administer, and enforce federal programs, program ~~measures~~ measures, and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, ~~which~~ that pertain to actions necessary to deal with an actual or impending energy shortage.

"**§ 113B-12. Annual reports; contents.**

(a) ~~Beginning January 1, 1977, and every year thereafter,~~No later than January 1 of each year, the Energy Policy Council shall transmit to the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the Utilities ~~Commission~~ Commission, and the appropriate chairmen of the House and Senate committees concerned with energy matters, a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The annual report under subsection (a) of this section shall include, but not be limited to, the following:

~~(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;~~

~~(2) The level of statewide and multi-county regional energy demand for a five-, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;~~

~~(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;~~

~~(4) An analysis and evaluation of the means by which the projected annual growth rate of energy demand may be reduced, together with an estimate of the amount of such reduction to be obtained by each of the means analyzed and evaluated;~~

~~(5) The status of the Council's ongoing energy research and development program and an assessment of the energy research and planning efforts carried out in North Carolina;~~

~~(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;~~

~~(7) A summary of the Council's activities since its inception, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium.~~

(8) Trends from the State Energy Plan that impact the State's energy supply and energy use and analyses of these trends.

(9) Priorities recommended by the Energy Policy Council the previous year.

(10) Priorities recommended by the Energy Policy Council for the coming year.

(11) A summary, related in terms of each component of the State Energy Plan, of projects of the State Energy Office of the Department of Administration.

(12) An analysis of the impacts of the projects summarized under subdivision (11) of this subsection.

"Article 2.

"Energy Crisis Administration.

"§ 113B-20. Definition; declaration of energy crisis.

(a) "Energy crisis". – An energy crisis exists when the health, welfare or safety of the citizens of North Carolina are threatened by reason of an actual or impending acute shortage in usable, necessary energy resources.

(b) Declaration by Governor. – Upon a finding by the Governor that the conditions stated in subsection (a) do exist, the Governor may declare the existence of an energy crisis.

"§ 113B-21. Creation of Legislative Committee on Energy Crisis Management.

(a) ~~There is hereby created a~~The Legislative Committee on Energy Crisis Management is created to consist of the Speaker, as chairman, the Speaker pro tempore of the House of Representatives and the President pro tempore and the majority leader of the Senate. The Lieutenant Governor shall serve as a nonvoting ex officio member, provided, however, that he shall vote to break a tie.

(b) The Legislative Committee shall convene within 24 hours following the declaration of an energy crisis, as provided in G.S. 113B-20.

(c) Members of the Legislative Committee shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

"§ 113B-22. Procedures for adopting emergency proposals; emergency powers.

(a) Upon the declaration of an energy crisis, the Governor shall submit to the Legislative Committee for its prompt consideration such emergency orders, rules and regulations as deemed necessary to alleviate the effects of the energy crisis.

(b) The Governor shall immediately consult with the Legislative Committee about the emergency proposals. The emergency orders, rules, or regulations shall become effective at a time specified by the Governor, but no earlier than 48 hours after submission to the Legislative Committee, provided that they may take effect at an earlier time if approved by a majority vote of the Council of State after the Council makes a finding that the crisis is of such immediacy as to make delay for legislative review cause for probable harm to the public.

(c) No order, rule, or regulation promulgated under the provisions of this section shall remain in effect for more than 30 days unless the Governor consults with the Legislative Committee. Such consultation is separate and apart from the consultation required by subsection (a) of this section, and may not take place until the order, rule, or regulation has been in effect for at least seven days.

(d) The Governor's orders, rules and regulations, promulgated, subject to consultation with the Legislative Committee, pursuant to this section, may also include, by way of further enumerated example rather than limitation, provisions for the establishment and implementation of programs, controls, standards, priorities, and quotas for the allocation, conservation and consumption of energy resources; the suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to water and air quality control and the hours and days during which public buildings may or may not be required to remain open; and the establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities.

"§ 113B-23. Administration of plans and procedures.

(a) Upon the declaration of an energy ~~crisis, pursuant to~~ crisis under G.S. 113B-20, the Energy Policy Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages;

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the Energy Policy Council, to carry out its responsibilities pursuant to this section;

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy Policy Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce ~~the Emergency Energy Program pursuant to G.S. 113B-9 and~~ any emergency rules, ~~orders~~ orders, or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be

reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22.

(d) ~~Within four months of July 1, 1975:~~ Upon the declaration of an energy crisis:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy Policy Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer doing business in this State as determined by the Energy Policy Council shall prepare and submit to the Energy Policy Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(3) Each major renewable and alternative energy provider, as determined by the Energy Policy Council, shall assess stock and shall inventory available facilities and resources.

"**§ 113B-24. Enforcement; penalties for violations.**

(a) The Attorney General and the law-enforcement authorities of the State and its political subdivisions shall enforce the provisions of this Article and all orders, rules and regulations promulgated pursuant to G.S. 113B-22.

(b) Any person who violates this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 or knowingly or willfully submits false information in any report required herein shall be guilty of a Class 1 misdemeanor.

(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy Policy Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 3. Appointments of members to the Energy Policy Council under G.S. 113B-3, as amended by Section 2 of this act, and designation of a chairman to the Energy Policy Council under G.S. 113B-4, as amended by Section 2 of this act, shall be made no later than January 31, 2006.

SECTION 4. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 384*

PROPOSED COMMITTEE SUBSTITUTE S384-CSRL-40 [v.2]

Short Title: NC Energy Policy Rewrite. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE NORTH CAROLINA ENERGY POLICY ACT OF 1975 AND TO APPROPRIATE FUNDS NECESSARY FOR THE REORGANIZATION OF THE ENERGY POLICY COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 113B of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 113C.**

"**North Carolina Energy Policy Act.**

"Article 1.

"Energy Policy Council.

"**§ 113C-1. Legislative findings and purpose.**

Upon investigation, the General Assembly hereby finds that:

(1) Energy is essential to the health, safety, and welfare of the people of this State and to the workings of the State economy.

(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic, and inefficient uses of energy, and a continuation of this trend will adversely affect the future social and economic development and the future environmental quality of North Carolina.

(3) It is the responsibility of State government to encourage a reliable and adequate supply of energy for North Carolina at a level consistent with energy needs required for the protection of public health and safety and for the promotion of the general welfare.

(4) The State needs a long-range unified energy policy to ensure the availability of reliable energy in the State, to improve the public health and the environmental quality of the State, to promote wise land use,

to support a sound economy of the State, to achieve a sustainable energy strategy for the State, and to provide a means by which State government leads the State by its example.

(5) It is the expressed intent of this Chapter to provide for development of a unified energy policy for the State.

"**§ 113C-2. Creation of Energy Policy Council; purpose of Council.**

(a) There is hereby created a council to advise and make recommendations on energy policy to the Governor and the General Assembly to be known as the Energy Policy Council. The Council shall be located within the Department of Administration.

(b) Except as otherwise provided in this Chapter, the powers, duties, and functions of the Energy Policy Council shall be as prescribed by the Secretary of Administration.

(c) The Energy Policy Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional, and local bodies and agencies to the end of effecting a coordinated energy policy.

"**§ 113C-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Policy Council shall consist of 15 members to be appointed as follows:

(1) Ten public members who are citizens of the State, to be appointed by the Governor.

(2) The chairman of the North Carolina Utilities Commission, the Secretary of Environment and Natural Resources, the Commissioner of Agriculture, the Secretary of Commerce, and the Secretary of Administration, or their designees from their respective departments.

(b) The appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his or her successor is duly appointed, but a holdover shall not affect the expiration date of the succeeding term.

(c) The public members of the Energy Policy Council shall have the following qualifications:

(1) One member shall be knowledgeable in the electric power industry.

(2) One member shall be knowledgeable in the natural gas industry.

(3) One member shall be knowledgeable in the petroleum marketing industry.

(4) One member shall be knowledgeable in economic analysis of energy requirements.

(5) One member shall be knowledgeable in environmental protection.

(6) One member shall be knowledgeable in industrial energy consumption.

(7) One member shall be knowledgeable in alternative sources of energy.

(8) One member shall be knowledgeable in energy efficiency technology and related energy conservation measures.

(9) One member who, at the time of appointment, is a county commissioner. This member's term on the Council shall expire

immediately in the event that he or she vacates office as a county commissioner.

(10) One member who, at the time of appointment, is an elected municipal official. This member's term on the Council shall expire immediately in the event that he or she vacates office as a county official.

(d) Terms of public members shall be staggered four-year terms. The initial terms of members appointed pursuant to subdivisions (2), (4), (6), (8), and (10) of subsection (c) of this section shall expire on December 31, 2007. The initial terms of members appointed pursuant to subdivisions (1), (3), (5), (7), and (9) of subsection (c) of this section shall expire on December 31, 2009.

"**§ 113C-4. Chairman of Council; replacement; reimbursement of members.**

(a) Every four years, the Governor shall designate one of the members of the Energy Policy Council to serve as chairman of the Council.

(b) In case of a vacancy in the membership on the Energy Policy Council prior to the expiration of a member's term, a successor shall be appointed within 90 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113C-3.

(c) Members of the Energy Policy Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

"**§ 113C-5. Organization of the Council; adoption of rules of procedure therefore.**

(a) To facilitate the work of the Energy Policy Council and for administrative purposes, the chairman of the Energy Policy Council, subject to the approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to ensure the efficient operation of the Council.

(b) The Energy Policy Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy Policy Council is authorized to create advisory committees that are needed to assist the Council in its efforts and to assure adequate citizen and consumer input into those efforts.

"**§ 113C-6. General duties and responsibilities.**

The Energy Policy Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor a comprehensive long-range State Energy Plan to achieve maximum effective management and use of present and future sources of energy. The State Energy Plan shall include, but not be limited to, components that address energy efficiency, energy analysis and assessment, contingency and energy emergency planning, and energy research and development.

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the

efficient use of all energy forms in a manner consistent with State energy policy.

(3) To continually review and coordinate all State government research, education, and management programs relating to energy matters and to continually educate and inform the general public regarding energy matters.

(4) To develop and administer the low-income residential energy program to improve energy efficiency in new affordable housing. Nothing in this subdivision shall be construed as obligating the General Assembly to appropriate funds for the program or as entitling any person to services under the program.

(5) To serve as the central repository within State government for the collection and storage of data and information on energy-related matters.

(6) To review and coordinate all State agency research and planning relating to energy in an effort to reduce duplication of work and to be the lead State agency for coordination of energy matters with local government, regional organizations, other states, and the federal government.

(7) To request and utilize the advice, information, and services of all State, regional, local, and federal agencies and to cooperate with the President of the United States and all said agencies in matters relating to energy research, programs, and policy.

"**§ 113C-7. Powers and authority.**

(a) The Energy Policy Council is authorized to secure directly from any agency or department of the State, and from its political subdivisions, any information it deems necessary to carry out its functions, and all agencies, departments, and political subdivisions shall cooperate with the Council and, to the extent permitted by law, furnish information to the Council that it requests.

(b) To assure the adequate development of relevant energy information, the Energy Policy Council may require all energy producers and major energy consumers, as determined by the Council, to file relevant reports and forecasts, in the form and at the times the Council may request, provided, however, that the Council may request only specific energy-related information that it deems necessary to carry out its duties as defined in Articles 1 and 2 of this Chapter.

(c) The Energy Policy Council shall have authority to apply for and utilize grants, contributions, and appropriations in order to carry out its duties as defined in Articles 1 and 2 of this Chapter, provided, however, that all applications and requests are made through and administered by the Department of Administration.

(d) The Energy Policy Council shall have authority to request the Department of Administration to allocate and disburse any funds made available to the Council for energy research and related work efforts in such a manner as the Council desires subject only to the stipulation that said funds be reasonably used in furtherance of the purposes of this Article.

(e) The Department of Administration shall provide the staffing capability to the Energy Policy Council so as to fully and effectively develop recommendations for a comprehensive State Energy Plan as contained in the provisions of this Article. The Utilities Commission and Public Staff are authorized to make their staffs available to the Council to assist in the development of a State Energy Plan.

(f) Annual funding to the State Energy Office may be provided from General Fund appropriations administered by the Department of Administration.

"**§ 113C-8. State Energy Plan; components.**

(a) The Energy Policy Council shall prepare a recommended State Energy Plan. The State Energy Plan shall include recommendations that address at least all of the following:

(1) Energy efficiency.
(2) Energy analysis and assessment.
(3) Contingency and energy emergency planning.
(4) Energy research and development.
(5) Implementation and modifications of energy policy, plans, and programs the Council considers necessary and desirable.
(6) Needed energy legislation.

(b) The recommendations included in the energy efficiency component of the State Energy Plan shall be designed to ensure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy by reducing wasteful, inefficient, or uneconomical uses of energy resources and shall include, but not be limited to:

(1) Recommendations to the Building Code Council for building design and construction standards that increase the efficient use of energy and water and are economically feasible to implement.
(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings that would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health, productivity, and safety.
(3) Recommendations for minimum levels of operating efficiency for all appliances, equipment, and tools whose use requires a significant amount of energy based upon both technical and economic feasibility considerations.
(4) Recommendations for State government purchases of supplies, vehicles, and equipment, as well as operating practices that will make possible more efficient use of energy.
(5) Recommendations on energy conservation policies, programs, and procedures for North Carolina energy consumers.
(6) Any other recommendations that the Energy Policy Council considers to be a significant part of a statewide conservation effort and that include provisions for sufficient incentives to further energy conservation.

(7) An economic and environmental impact analysis of the recommended plan.

(c) The recommendations in the State Energy Plan that address energy analysis and assessment shall encourage the most efficient use of sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable, or uneconomical sources of energy. These recommendations shall include, but not be limited to, the following:

(1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy supply.

(2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of consumption and its effect upon jobs.

(3) An independent analysis, in five- and 10-year forecasts, of future energy production, supplies, and consumption for North Carolina in relation to forecasts of statewide population growth and economic expansion.

(4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the State.

(5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North Carolina.

(6) An assessment of the social, economic, and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply limitations.

(7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next five- and 10-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(d) The recommendations of the Energy Policy Council shall include a contingency and emergency plan that addresses possible shortages of energy in order to protect the public health, safety, and welfare. In developing the contingency and emergency plan under this subsection, the Energy Policy Council shall:

(1) Encourage the preparation of joint emergency curtailment plans and analyses. If cooperative plans and analyses are developed between two or more utilities, major producers, or by an association of such companies, the joint plans or analyses may be submitted to the Energy Policy Council in lieu of information required under G.S. 113C-13(d).

(2) Collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(3) Include provisions that differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments. These provisions shall address at least all of the following:

a. A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113C-10, and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses.

b. Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations.

c. Proposals to assist those individuals, institutions, agriculture, and businesses that have engaged in energy saving measures.

(4) Carry out any investigations and studies that are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina.

(5) Make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages.

(6) Develop procedures, rules, and agency administrative responsibilities to implement the contingency and emergency plan and develop procedures, to be included in the contingency and emergency plan, for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations.

(e) In developing the research and development component of the State Energy Plan, the Energy Policy Council shall encourage research studies and projects that are related to energy conservation and management and to the development of alternative and renewable energy technologies. In addition, this component shall develop and coordinate a statewide program of research and development in energy-related matters and shall give priority in encouraging and supporting such efforts to those areas of energy research and development that are of particular importance to North Carolina.

(f) The State Energy Plan shall contain proposals for implementation of recommendations that can be carried out by executive order.

(g) Upon completion of a draft-recommended plan, the Energy Policy Council shall arrange for its distribution to interested parties and shall make the plan available to the public. The Council shall hold one or more public hearings on the draft-recommended State Energy Plan.

(h) Upon completion of the State Energy Plan, the Energy Policy Council shall transmit the plan to the Governor for approval or disapproval. Upon approval, the Governor may assign administrative responsibility for implementation of those proposals that can be carried out by executive order to appropriate agencies of State

government and may submit to the General Assembly those proposals that require legislative action for implementation.

(i) When the State Energy Plan is approved pursuant to subsection (h) of this section, the Governor shall transmit the State Energy Plan to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Joint Legislative Utility Review Committee, the Environmental Review Commission, the Utilities Commission, the Public Staff, and the heads of all State agencies. The Governor shall further seek to publicize the State Energy Plan and make it available to all units of local government and to the public at large.

(j) At least every four years, and whenever changes take place that would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the State Energy Plan, transmitting the revised plan to the Governor pursuant to the procedures contained in subsection (h) of this section. Upon approval, the Governor shall distribute it pursuant to subsection (i) of this section.

"**§ 113C-9. Annual reports; contents.**

(a) No later than January 1 of each year, beginning January 1, 2006, the Energy Policy Council shall transmit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairman of the Utilities Commission, the Executive Director of the Public Staff, the Joint Legislative Utility Review Committee, and the Environmental Review Commission a comprehensive report providing a general overview of energy conditions in the State.

(b) The annual report shall include, but not be limited to, the following:

(1) Trends from the State Energy Plan that impact the State's energy supply and energy use and analyses of these trends.

(2) Priorities recommended by the Energy Policy Council the previous year.

(3) Priorities recommended by the Energy Policy Council for the coming year.

(4) A summary, related in terms of each component of the State Energy Plan, of projects of the State Energy Office.

(5) An analysis of the impacts of the projects summarized under subdivision (4) of this subsection.

"Article 2.

"Energy Crisis Administration.

"**§ 113C-10. Declaration of energy crisis.**

If the Governor finds that the health, safety, or welfare of the citizens of North Carolina is threatened by an actual or impending acute shortage in usable, necessary energy resources, the Governor may declare the existence of an energy crisis.

"**§ 113C-11. Creation of Legislative Committee on Energy Crisis Management.**

(a) The Legislative Committee on Energy Crisis Management is created to consist of the Speaker of the House of Representatives as chairman, the Speaker Pro Tempore of the House of Representatives, the President Pro Tempore of the Senate, and

the Majority Leader of the Senate. The Lieutenant Governor shall serve as a nonvoting member, provided, however, that the Lieutenant Governor shall vote to break a tie.

(b) The Legislative Committee shall convene within 24 hours following the declaration of an energy crisis, as provided in G.S. 113C-10.

(c) Members of the Legislative Committee who are members of the General Assembly shall be reimbursed for their services pursuant to the provisions of G.S. 120-3.1. The Lieutenant Governor shall be reimbursed pursuant to G.S. 138-5.

"**§ 113C-12. Procedures for adopting emergency proposals; emergency powers.**

(a) Upon the declaration of an energy crisis, the Governor shall submit to the Legislative Committee for its prompt consideration such emergency orders, rules, and regulations as deemed necessary to alleviate the effects of the energy crisis.

(b) The Governor's orders, rules, and regulations promulgated pursuant to this section may also include, by way of further enumerated example rather than limitation, provisions for the establishment and implementation of programs, controls, standards, priorities, and quotas for the allocation, conservation, and consumption of energy resources; the suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to water and air quality control and the hours and days during which public buildings may or may not be required to remain open; and the establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities.

(c) The Governor shall immediately consult with the Legislative Committee about the emergency proposals. The emergency orders, rules, or regulations shall become effective at a time specified by the Governor, but no earlier than 48 hours after submission to the Legislative Committee, provided that they may take effect at an earlier time if approved by a majority vote of the Council of State after the Council of State makes a finding that the crisis is of such immediacy as to make delay for Legislative Committee review cause for probable harm to the public.

(d) No order, rule, or regulation promulgated under the provisions of this section shall remain in effect for more than 30 days unless the Governor consults with the Legislative Committee. This consultation is separate and apart from the consultation required by subsection (a) of this section and may not take place until the order, rule, or regulation has been in effect for at least seven days.

"**§ 113C-13. Administration of plans and procedures.**

(a) Upon the declaration of an energy crisis under G.S. 113C-10, the Energy Policy Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages.

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters, and major consumers, as determined by the Energy Policy Council, to carry out its responsibilities pursuant to this section.

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy Policy Council and other appropriate State and local agencies to implement and enforce any emergency rules, orders, or regulations approved pursuant to G.S. 113C-12 and shall request the Utilities Commission and the Attorney General to do the same.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders, and regulations issued pursuant to G.S. 113C-12.

(d) Upon the declaration of an energy crisis:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy Policy Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113C-10 and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer and oil supplier doing business in this State, as determined by the Energy Policy Council, shall prepare and submit to the Energy Policy Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(3) Each major renewable and alternative energy provider, as determined by the Energy Policy Council, shall assess stock and shall inventory available facilities and resources and submit the information to the Energy Policy Council.

"**§ 113C-14. Enforcement; penalties for violations.**

(a) The Attorney General and the law enforcement authorities of the State and its political subdivisions shall enforce the provisions of this Article and all orders, rules, and regulations promulgated pursuant to G.S. 113C-12.

(b) Any person who violates this Article or any rules, orders, or regulations promulgated pursuant to G.S. 113C-12 or knowingly or willfully submits false information in any report required herein shall be guilty of a Class 1 misdemeanor.

(c) The provisions of this Article or any rules, orders, or regulations promulgated pursuant to G.S. 113C-12 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule, or regulation and restitution of money received in violation of any such order, rule, or regulation. The Attorney General may bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management,

the Energy Policy Council, or upon the Attorney General's direction if the Attorney General deems such action advisable and in the public interest. The Attorney General may institute an action in the Superior Court of Wake County, or, in the Attorney General's discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring, or may occur."

SECTION 3. Appointments of members to the Energy Policy Council under G.S. 113C-3, as enacted by this act, and designation of a chairman of the Energy Policy Council under G.S. 113C-4, as enacted by this act, shall be made no later than January 31, 2006. Members of the Energy Policy Council serving pursuant to G.S.113B-3 and the chairman serving pursuant to G.S. 113B-4, which are repealed by this act, but not including the members of the General Assembly, shall continue to serve until the members and chairman of the Energy Policy Council are appointed pursuant to Chapter 113C of the General Statutes, as enacted by this act.

SECTION 4. The records, personnel, property, unexpended balances, allocations, and other funds vested in the Energy Policy Council created pursuant to Chapter 113B of the General Statutes, repealed by this act, shall be transferred to the Energy Policy Council created pursuant to Chapter 113C of the General Statutes, created by this act, when this act becomes effective.

SECTION 5. There is appropriated from the General Fund to the Department of Administration the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and the sum of seven hundred fifty thousand dollars ($750,000) for the 2006-2007 fiscal year. The funds appropriated in this section shall be used for the purpose of funding the transition and reorganization the Energy Policy Council in accordance with the provisions of this act.

SECTION 6. Section 5 of this act becomes effective July 1, 2005. The remainder of this act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 384*

PROPOSED COMMITTEE SUBSTITUTE S384-PCS85292-RL-40

Short Title: NC Energy Policy Rewrite. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE NORTH CAROLINA ENERGY POLICY ACT OF 1975 AND TO APPROPRIATE FUNDS NECESSARY FOR THE REORGANIZATION OF THE ENERGY POLICY COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 113B of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 113C.**

"**North Carolina Energy Policy Act.**

"Article 1.

"Energy Policy Council.

"**§ 113C-1. Legislative findings and purpose.**

Upon investigation, the General Assembly hereby finds that:

(1) Energy is essential to the health, safety, and welfare of the people of this State and to the workings of the State economy.

(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic, and inefficient uses of energy, and a continuation of this trend will adversely affect the future social and economic development and the future environmental quality of North Carolina.

(3) It is the responsibility of State government to encourage a reliable and adequate supply of energy for North Carolina at a level consistent with energy needs required for the protection of public health and safety and for the promotion of the general welfare.

(4) The State needs a long-range unified energy policy to ensure the availability of reliable energy in the State, to improve the public health and the environmental quality of the State, to promote wise land use,

to support a sound economy of the State, to achieve a sustainable energy strategy for the State, and to provide a means by which State government leads the State by its example.

(5) It is the expressed intent of this Chapter to provide for development of a unified energy policy for the State.

"**§ 113C-2. Creation of Energy Policy Council; purpose of Council.**

(a) There is hereby created a council to advise and make recommendations on energy policy to the Governor and the General Assembly to be known as the Energy Policy Council. The Council shall be located within the Department of Administration.

(b) Except as otherwise provided in this Chapter, the powers, duties, and functions of the Energy Policy Council shall be as prescribed by the Secretary of Administration.

(c) The Energy Policy Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional, and local bodies and agencies to the end of effecting a coordinated energy policy.

"**§ 113C-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Policy Council shall consist of 15 members to be appointed as follows:

(1) Ten public members who are citizens of the State, to be appointed by the Governor.

(2) The chairman of the North Carolina Utilities Commission, the Secretary of Environment and Natural Resources, the Commissioner of Agriculture, the Secretary of Commerce, and the Secretary of Administration, or their designees from their respective departments.

(b) The appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his or her successor is duly appointed, but a holdover shall not affect the expiration date of the succeeding term.

(c) The public members of the Energy Policy Council shall have the following qualifications:

(1) One member shall be knowledgeable in the electric power industry.

(2) One member shall be knowledgeable in the natural gas industry.

(3) One member shall be knowledgeable in the petroleum marketing industry.

(4) One member shall be knowledgeable in economic analysis of energy requirements.

(5) One member shall be knowledgeable in environmental protection.

(6) One member shall be knowledgeable in industrial energy consumption.

(7) One member shall be knowledgeable in alternative sources of energy.

(8) One member shall be knowledgeable in energy efficiency technology and related energy conservation measures.

(9) One member who, at the time of appointment, is a county commissioner. This member's term on the Council shall expire

immediately in the event that he or she vacates office as a county commissioner.

(10) One member who, at the time of appointment, is an elected municipal official. This member's term on the Council shall expire immediately in the event that he or she vacates office as an elected municipal official.

(d) Terms of public members shall be staggered four-year terms. The initial terms of members appointed pursuant to subdivisions (2), (4), (6), (8), and (10) of subsection (c) of this section shall expire on December 31, 2007. The initial terms of members appointed pursuant to subdivisions (1), (3), (5), (7), and (9) of subsection (c) of this section shall expire on December 31, 2009.

"**§ 113C-4. Chairman of Council; replacement; reimbursement of members.**

(a) Every four years, the Governor shall designate one of the members of the Energy Policy Council to serve as chairman of the Council.

(b) In case of a vacancy in the membership on the Energy Policy Council prior to the expiration of a member's term, a successor shall be appointed within 90 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113C-3.

(c) Members of the Energy Policy Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5.

"**§ 113C-5. Organization of the Council; adoption of rules of procedure therefor.**

(a) To facilitate the work of the Energy Policy Council and for administrative purposes, the chairman of the Energy Policy Council, subject to the approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to ensure the efficient operation of the Council.

(b) The Energy Policy Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy Policy Council is authorized to create advisory committees that are needed to assist the Council in its efforts and to assure adequate citizen and consumer input into those efforts.

"**§ 113C-6. General duties and responsibilities.**

The Energy Policy Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor a comprehensive long-range State Energy Plan to achieve maximum effective management and use of present and future sources of energy. The State Energy Plan shall include, but not be limited to, components that address energy efficiency, energy analysis and assessment, contingency and energy emergency planning, and energy research and development.

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the

efficient use of all energy forms in a manner consistent with State energy policy.

(3) To continually review and coordinate all State government research, education, and management programs relating to energy matters and to continually educate and inform the general public regarding energy matters.

(4) To develop and administer the low-income residential energy program to improve energy efficiency in new affordable housing. Nothing in this subdivision shall be construed as obligating the General Assembly to appropriate funds for the program or as entitling any person to services under the program.

(5) To serve as the central repository within State government for the collection and storage of data and information on energy-related matters.

(6) To review and coordinate all State agency research and planning relating to energy in an effort to reduce duplication of work and to be the lead State agency for coordination of energy matters with local government, regional organizations, other states, and the federal government.

(7) To request and utilize the advice, information, and services of all State, regional, local, and federal agencies and to cooperate with the President of the United States and all said agencies in matters relating to energy research, programs, and policy.

"**§ 113C-7. Powers and authority.**

(a) The Energy Policy Council is authorized to secure directly from any agency or department of the State, and from its political subdivisions, any information it deems necessary to carry out its functions, and all agencies, departments, and political subdivisions shall cooperate with the Council and, to the extent permitted by law, furnish information to the Council that it requests.

(b) To assure the adequate development of relevant energy information, the Energy Policy Council may require all energy producers and major energy consumers, as determined by the Council, to file relevant reports and forecasts, in the form and at the times the Council may request, provided, however, that the Council may request only specific energy-related information that it deems necessary to carry out its duties as defined in Articles 1 and 2 of this Chapter.

(c) The Energy Policy Council shall have authority to apply for and utilize grants, contributions, and appropriations in order to carry out its duties as defined in Articles 1 and 2 of this Chapter, provided, however, that all applications and requests are made through and administered by the Department of Administration.

(d) The Energy Policy Council shall have authority to request the Department of Administration to allocate and disburse any funds made available to the Council for energy research and related work efforts in such a manner as the Council desires subject only to the stipulation that said funds be reasonably used in furtherance of the purposes of this Article.

(e) The Department of Administration shall provide the staffing capability to the Energy Policy Council so as to fully and effectively develop recommendations for a comprehensive State Energy Plan as contained in the provisions of this Article. The Utilities Commission and Public Staff are authorized to make their staffs available to the Council to assist in the development of a State Energy Plan.

(f) Annual funding to the State Energy Office may be provided from General Fund appropriations administered by the Department of Administration.

"**§ 113C-8. State Energy Plan; components.**

(a) The Energy Policy Council shall prepare a recommended State Energy Plan. The State Energy Plan shall include recommendations that address at least all of the following:

(1) Energy efficiency.

(2) Energy analysis and assessment.

(3) Contingency and energy emergency planning.

(4) Energy research and development.

(5) Implementation and modifications of energy policy, plans, and programs the Council considers necessary and desirable.

(6) Needed energy legislation.

(b) The recommendations included in the energy efficiency component of the State Energy Plan shall be designed to ensure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy by reducing wasteful, inefficient, or uneconomical uses of energy resources and shall include, but not be limited to:

(1) Recommendations to the Building Code Council for building design and construction standards that increase the efficient use of energy and water and are economically feasible to implement.

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings that would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health, productivity, and safety.

(3) Recommendations for minimum levels of operating efficiency for all appliances, equipment, and tools whose use requires a significant amount of energy based upon both technical and economic feasibility considerations.

(4) Recommendations for State government purchases of supplies, vehicles, and equipment, as well as operating practices that will make possible more efficient use of energy.

(5) Recommendations on energy conservation policies, programs, and procedures for North Carolina energy consumers.

(6) Any other recommendations that the Energy Policy Council considers to be a significant part of a statewide conservation effort and that include provisions for sufficient incentives to further energy conservation.

(7) An economic and environmental impact analysis of the recommended plan.

(c) The recommendations in the State Energy Plan that address energy analysis and assessment shall encourage the most efficient use of sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable, or uneconomical sources of energy. These recommendations shall include, but not be limited to, the following:

(1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy supply.

(2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of consumption and its effect upon jobs.

(3) An independent analysis, in five- and 10-year forecasts, of future energy production, supplies, and consumption for North Carolina in relation to forecasts of statewide population growth and economic expansion.

(4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the State.

(5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North Carolina.

(6) An assessment of the social, economic, and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply limitations.

(7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next five- and 10-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(d) The recommendations of the Energy Policy Council shall include a contingency and emergency plan that addresses possible shortages of energy in order to protect the public health, safety, and welfare. In developing the contingency and emergency plan under this subsection, the Energy Policy Council shall:

(1) Encourage the preparation of joint emergency curtailment plans and analyses. If cooperative plans and analyses are developed between two or more utilities, major producers, or by an association of such companies, the joint plans or analyses may be submitted to the Energy Policy Council in lieu of information required under G.S. 113C-13(d).

(2) Collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(3) Include provisions that differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments. These provisions shall address at least all of the following:

a. A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113C-10, and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses.

b. Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations.

c. Proposals to assist those individuals, institutions, agriculture, and businesses that have engaged in energy-saving measures.

(4) Carry out any investigations and studies that are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina.

(5) Make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages.

(6) Develop procedures, rules, and agency administrative responsibilities to implement the contingency and emergency plan and develop procedures, to be included in the contingency and emergency plan, for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations.

(e) In developing the research and development component of the State Energy Plan, the Energy Policy Council shall encourage research studies and projects that are related to energy conservation and management and to the development of alternative and renewable energy technologies. In addition, this component shall develop and coordinate a statewide program of research and development in energy-related matters and shall give priority in encouraging and supporting such efforts to those areas of energy research and development that are of particular importance to North Carolina.

(f) The State Energy Plan shall contain proposals for implementation of recommendations that can be carried out by executive order.

(g) Upon completion of a draft-recommended plan, the Energy Policy Council shall arrange for its distribution to interested parties and shall make the plan available to the public. The Council shall hold one or more public hearings on the draft-recommended State Energy Plan.

(h) Upon completion of the State Energy Plan, the Energy Policy Council shall transmit the plan to the Governor for approval or disapproval. Upon approval, the Governor may assign administrative responsibility for implementation of those proposals that can be carried out by executive order to appropriate agencies of State

government and may submit to the General Assembly those proposals that require legislative action for implementation.

(i) When the State Energy Plan is approved pursuant to subsection (h) of this section, the Governor shall transmit the State Energy Plan to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Joint Legislative Utility Review Committee, the Environmental Review Commission, the Utilities Commission, the Public Staff, and the heads of all State agencies. The Governor shall further seek to publicize the State Energy Plan and make it available to all units of local government and to the public at large.

(j) At least every four years, and whenever changes take place that would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the State Energy Plan, transmitting the revised plan to the Governor pursuant to the procedures contained in subsection (h) of this section. Upon approval, the Governor shall distribute it pursuant to subsection (i) of this section.

"**§ 113C-9. Annual reports; contents.**

(a) No later than January 1 of each year, beginning January 1, 2006, the Energy Policy Council shall transmit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairman of the Utilities Commission, the Executive Director of the Public Staff, the Joint Legislative Utility Review Committee, and the Environmental Review Commission a comprehensive report providing a general overview of energy conditions in the State.

(b) The annual report shall include, but not be limited to, the following:

(1) Trends from the State Energy Plan that impact the State's energy supply and energy use and analyses of these trends.

(2) Priorities recommended by the Energy Policy Council the previous year.

(3) Priorities recommended by the Energy Policy Council for the coming year.

(4) A summary, related in terms of each component of the State Energy Plan, of projects of the State Energy Office.

(5) An analysis of the impacts of the projects summarized under subdivision (4) of this subsection.

"Article 2.

"Energy Crisis Administration.

"**§ 113C-10. Declaration of energy crisis.**

If the Governor finds that the health, safety, or welfare of the citizens of North Carolina is threatened by an actual or impending acute shortage in usable, necessary energy resources, the Governor may declare the existence of an energy crisis.

"**§ 113C-11. Creation of Legislative Committee on Energy Crisis Management.**

(a) The Legislative Committee on Energy Crisis Management is created to consist of the Speaker of the House of Representatives as chairman, the Speaker Pro Tempore of the House of Representatives, the President Pro Tempore of the Senate, and

the Majority Leader of the Senate. The Lieutenant Governor shall serve as a nonvoting member, provided, however, that the Lieutenant Governor shall vote to break a tie.

(b) The Legislative Committee shall convene within 24 hours following the declaration of an energy crisis, as provided in G.S. 113C-10.

(c) Members of the Legislative Committee who are members of the General Assembly shall be reimbursed for their services pursuant to the provisions of G.S. 120-3.1. The Lieutenant Governor shall be reimbursed pursuant to G.S. 138-5.

"**§ 113C-12. Procedures for adopting emergency proposals; emergency powers.**

(a) Upon the declaration of an energy crisis, the Governor shall submit to the Legislative Committee for its prompt consideration such emergency orders, rules, and regulations as deemed necessary to alleviate the effects of the energy crisis.

(b) The Governor's orders, rules, and regulations promulgated pursuant to this section may also include, by way of further enumerated example rather than limitation, provisions for the establishment and implementation of programs, controls, standards, priorities, and quotas for the allocation, conservation, and consumption of energy resources; the suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to water and air quality control and the hours and days during which public buildings may or may not be required to remain open; and the establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities.

(c) The Governor shall immediately consult with the Legislative Committee about the emergency proposals. The emergency orders, rules, or regulations shall become effective at a time specified by the Governor, but no earlier than 48 hours after submission to the Legislative Committee, provided that they may take effect at an earlier time if approved by a majority vote of the Council of State after the Council of State makes a finding that the crisis is of such immediacy as to make delay for Legislative Committee review cause for probable harm to the public.

(d) No order, rule, or regulation promulgated under the provisions of this section shall remain in effect for more than 30 days unless the Governor consults with the Legislative Committee. This consultation is separate and apart from the consultation required by subsection (a) of this section and may not take place until the order, rule, or regulation has been in effect for at least seven days.

"**§ 113C-13. Administration of plans and procedures.**

(a) Upon the declaration of an energy crisis under G.S. 113C-10, the Energy Policy Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages.

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters, and major consumers, as determined by the Energy Policy Council, to carry out its responsibilities pursuant to this section.

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy Policy Council and other appropriate State and local agencies to implement and enforce any emergency rules, orders, or regulations approved pursuant to G.S. 113C-12 and shall request the Utilities Commission and the Attorney General to do the same.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders, and regulations issued pursuant to G.S. 113C-12.

(d) Upon the declaration of an energy crisis:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy Policy Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113C-10 and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer and oil supplier doing business in this State, as determined by the Energy Policy Council, shall prepare and submit to the Energy Policy Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(3) Each major renewable and alternative energy provider, as determined by the Energy Policy Council, shall assess stock and shall inventory available facilities and resources and submit the information to the Energy Policy Council.

"**§ 113C-14. Enforcement; penalties for violations.**

(a) The Attorney General and the law enforcement authorities of the State and its political subdivisions shall enforce the provisions of this Article and all orders, rules, and regulations promulgated pursuant to G.S. 113C-12.

(b) Any person who violates this Article or any rules, orders, or regulations promulgated pursuant to G.S. 113C-12 or knowingly or willfully submits false information in any report required herein shall be guilty of a Class 1 misdemeanor.

(c) The provisions of this Article or any rules, orders, or regulations promulgated pursuant to G.S. 113C-12 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule, or regulation and restitution of money received in violation of any such order, rule, or regulation. The Attorney General may bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management,

the Energy Policy Council, or upon the Attorney General's direction if the Attorney General deems such action advisable and in the public interest. The Attorney General may institute an action in the Superior Court of Wake County, or, in the Attorney General's discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring, or may occur."

SECTION 3. Appointments of members to the Energy Policy Council under G.S. 113C-3, as enacted by this act, and designation of a chairman of the Energy Policy Council under G.S. 113C-4, as enacted by this act, shall be made no later than January 31, 2006. Members of the Energy Policy Council serving pursuant to G.S. 113B-3 and the chairman serving pursuant to G.S. 113B-4, which are repealed by this act, but not including the members of the General Assembly, shall continue to serve until the members and chairman of the Energy Policy Council are appointed pursuant to Chapter 113C of the General Statutes, as enacted by this act.

SECTION 4. The records, personnel, property, unexpended balances, allocations, and other funds vested in the Energy Policy Council created pursuant to Chapter 113B of the General Statutes, repealed by this act, shall be transferred to the Energy Policy Council created pursuant to Chapter 113C of the General Statutes, created by this act, when this act becomes effective.

SECTION 5. There is appropriated from the General Fund to the Department of Administration the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and the sum of seven hundred fifty thousand dollars ($750,000) for the 2006-2007 fiscal year. The funds appropriated in this section shall be used for the purpose of funding the transition and reorganization of the Energy Policy Council in accordance with the provisions of this act.

SECTION 6. Section 5 of this act becomes effective July 1, 2005. The remainder of this act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1284
Committee Substitute Favorable 6/21/05
Third Edition Engrossed 6/29/05

Short Title: Improve Real Estate Licensing Law. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate ~~brokers and real estate salespersons.~~brokers.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate ~~broker or real estate salesperson,~~ broker, or directly or indirectly to engage or assume to engage in the business of real estate broker ~~or real estate salesperson~~ or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker ~~or salesperson~~ in this State."

SECTION 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4.3, must be supervised by a broker-in-charge when performing any act for which a real estate license is required."

SECTION 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who ~~under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate~~

~~broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.~~was formerly licensed by the Commission as a real estate salesperson before March 1, 2006."

SECTION 4. G.S. 93A-3 reads as rewritten:

"**§ 93A-3. Commission created; compensation; organization.**

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate ~~brokers or real estate salespersons.~~brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

...

(c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker ~~or salesperson~~ to negotiate any real estate transaction on behalf of another.

...."

SECTION 5. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker ~~or real estate salesperson~~ shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within~~

~~three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course.~~ Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least ~~60~~ 75 hours of classroom instruction in subjects determined by the Commission, ~~which shall be in addition to the course required for a real estate salesperson license,~~ or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(a1) Each person who is issued a real estate broker license on or after March 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be cancelled, and the Commission may, in its discretion, require the person whose license was cancelled to satisfy the postlicensing education program and the requirements for original licensure prescribed in this Chapter as a condition of license reinstatement, including the examination requirements and the license reinstatement fee prescribed by subsection (c) of this section.

(a2) An approved school shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker ~~or a license as real estate salesperson~~ shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the

examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. ~~A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.~~ A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character of each applicant for licensure and require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker ~~or real estate salesperson~~ in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

...."

SECTION 6. G.S. 93A-4A reads as rewritten:

"**§ 93A-4A. Continuing education.**

(a) The Commission shall establish a program of continuing education for real estate ~~brokers and salespersons.~~brokers. An individual licensed as a real estate broker ~~or salesperson~~ is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate ~~broker or salesperson.~~broker.

(a1) ~~In addition to the requirements of subsection (a) of this section, the~~The Commission ~~may~~ may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course ~~of study, not to exceed six classroom hours every three years,~~ consisting of not more than four classroom hours of instruction in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers ~~and salespersons~~ while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt any reasonable rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.
(2) The curriculum of courses required.
(3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers and salespersons not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars ($125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval.

~~The Commission may also require a~~ An approved course sponsor ~~to~~ shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor. ~~The fee shall not exceed five dollars ($5.00) per licensee.~~

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars ($50.00)."

SECTION 7. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new sections to read:

"**§ 93A-4.2. Broker-in-charge qualification.**

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least one year of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds

equivalent to such experience, and shall complete, within a time prescribed by the Commission, a course of study prescribed by the Commission for brokers-in-charge not to exceed 12 classroom hours of instruction. A provisional broker may not be designated as a broker-in-charge.

"**§ 93A-4.3. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

(a) Effective March 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective March 1, 2006, all salesperson licenses shall become broker licenses, and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).

(b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than March 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by March 1, 2008, the provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by March 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

(c) An approved school or sponsor shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and February 28, 2006, shall, not later than March 1, 2009, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by March 1, 2009, the broker's license shall be cancelled, and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).

(e) A broker who was issued a broker license prior to March 1, 2006, shall not be required to complete either the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.

(f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or

after the October 1, 2005, or March 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on March 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on March 1, 2006, the applicant's application shall be cancelled and the application fee refunded.

(g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005."

SECTION 8. G.S. 93A-5 reads as rewritten:

"**§ 93A-5. Register of applicants; roster of ~~brokers and salespersons;~~brokers; financial report to Secretary of State.**

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate ~~brokers and real estate salespersons,~~brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers ~~and real estate salespersons~~ holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission."

SECTION 9. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of

superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 10. G.S. 93A-6.1(a) reads as rewritten:

"(a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for ~~inspection.~~inspection or deliver the same into the custody of the Commission's authorized representatives. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court."

SECTION 11. G.S. 93A-9 reads as rewritten:

"**§ 93A-9. Licensing nonresidents.**

(a) An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers ~~and salespersons~~ from North Carolina. A license applicant who has been a resident of North Carolina for not more than 90 days may be considered by the Commission as a nonresident for the purposes of this subsection.

(b) The Commission may issue a limited broker's ~~or salesperson's~~ license to a person or an entity from another state or territory of the United States without regard to whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:

(1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.

(2) Only engages in business as a real estate broker ~~or salesperson~~ in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate ~~broker or salesperson.~~broker.

(3) Complies with the laws of this State regulating real estate brokers and ~~salespersons and~~ rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars ($300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate ~~broker or salesperson,~~broker, and the resident North Carolina real estate broker ~~or salesperson~~ shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate ~~brokers or salespersons;~~ brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers ~~or salespersons~~ and persons or entities seeking licensure under this subsection."

SECTION 12. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new section to read:

"**§ 93A-12. Disputed monies.**

A real estate broker licensed under this Chapter may deposit with the clerk of court, monies, other than a residential security deposit, the ownership of which are in dispute and that the real estate broker received while acting in a fiduciary capacity. The disputed monies shall be deposited with the clerk of court in the county in which the property for which the disputed monies are being held is located. At the time of depositing the disputed monies, the real estate broker shall provide proof to the clerk of court that the persons who are claiming ownership of the disputed monies have been notified that the disputed monies are to be deposited with the clerk of court and that they may initiate a special proceeding with the clerk of court to recover the disputed monies. Notice to the persons who are claiming ownership to the disputed monies shall be provided by either mailing a copy of the notice, registered or certified mail, addressed to the person to be served, and delivering it to the addressee, or depositing with a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) a copy of the notice, addressed to the person to be served, and delivering it to the addressee. A real estate broker shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies. Upon the filing of a special proceeding to recover the disputed monies, the clerk shall

determine the rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the clerk shall escheat the funds."

SECTION 13. G.S. 93A-16(a) reads as rewritten:

"(a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate ~~broker or salesperson licensed under this Chapter.~~salesperson licensed before March 1, 2006, or by any real estate broker."

SECTION 14. G.S. 93A-17 reads as rewritten:

"**§ 93A-17. Grounds for payment; notice and application to Commission.**

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate ~~broker or~~ salesperson licensed before March 1, 2006, or by any licensed real estate broker ~~under this Chapter~~ shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesperson acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms "licensee", "broker", and "salesperson" shall include only individual persons licensed under this Chapter as brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons prior to March 1, 2006. The terms "licensee", "broker", and "salesperson" ~~and~~ shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

SECTION 15. G.S. 93A-22 reads as rewritten:

"**§ 93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, ~~the~~ any license ~~of~~ issued to the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

SECTION 16. G.S. 93A-32(2) reads as rewritten:

"(2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, ~~corporation~~ corporation, limited liability company or association, and which conducts, for a profit or tuition charge, real estate ~~salesperson or~~ broker prelicensing or postlicensing courses prescribed by ~~G.S. 93A-4(a),~~G.S. 93A-4(a) or (a1), provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate school."

SECTION 17. G.S. 93A-34 reads as rewritten:

"**§ 93A-34. License required; application for license; fees; requirements for issuance of license.**

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license is first obtained from the Commission in accordance with the provisions of this Article and the rules and regulations promulgated by the Commission under this Article. For licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set

nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each school location and fifty dollars ($50.00) for each real estate ~~salesperson or~~ broker prelicensing or postlicensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

(1) Name and address of the applicant and the school;
(2) Names, biographical data, and qualifications of director, administrators and instructors;
(3) Description of school facilities and equipment;
(4) Description of course(s) to be offered and instructional materials to be utilized;
(5) Information on financial resources available to equip and operate the school;
(6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;
(7) Copies of bulletins, catalogues and other official publications;
(8) Copy of bond required by G.S. 93A-36;
(9) Such additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.
(2) The director, administrators and instructors are adequately qualified by reason of education and experience.
(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.
(4) The school has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
(5) The school publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as being true and correct in content and policy by an authorized school official, and which contains the following information:
    a. Identifying data and publication date;
    b. Name(s) of school and its full-time officials and faculty;

c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;
d. Detailed schedule of tuition and fees;
e. Detailed course outline of all courses offered.

(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.

(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.

(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.

(9) The school's owner(s), director, administrators and instructors are of good reputation and character.

(10) The ~~school complies~~school's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding ~~safety and sanitation of facilities.~~health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.

(11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest."

SECTION 18. G.S. 93A-38(6) reads as rewritten:

"**§ 93A-38. Suspension, revocation or denial of license.**

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

...

(6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, ~~or~~ any partner of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court."

SECTION 19. G.S. 93A-40 reads as rewritten:

"**§ 93A-40. Registration required of time share projects; real estate ~~salespersons~~ license required.**

(a) ~~From and after July 1, 1984, it~~It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first

obtaining a real estate broker ~~or salesperson~~ license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

SECTION 20. G.S. 93A-41(7a) reads as rewritten:

"(7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers ~~and salespersons~~ at the time share project;".

SECTION 21. G.S. 93A-50 reads as rewritten:

"**§ 93A-50. Securities laws apply.**

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker ~~or salesperson~~ registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36."

SECTION 22. G.S. 93A-52 reads as rewritten:

"**§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.**

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed ~~fifteen hundred dollars ($1500),~~ one thousand five hundred dollars ($1,500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's time share salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the

developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

...

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a ~~late filing~~ fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

SECTION 23. G.S. 93A-54 reads as rewritten:

"**§ 93A-54. Disciplinary action by Commission.**

(a) The Commission has power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson,

developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

...

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesperson,~~salespersons, advertising or otherwise;

...

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker ~~or salesperson~~ or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

SECTION 24. G.S. 93A-58(c) reads as rewritten:

"(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all ~~persons licensed as~~ time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons ~~licensed as brokers or salespersons~~ at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter."

SECTION 24. This section and G.S. 93A-4.3, as enacted in Section 7 of this act, are effective when this act becomes law. Sections 6 and 12 of this act become effective October 1, 2005. The remainder of the act becomes effective March 1, 2006.

HOUSE BILL 1284:
Improve Real Estate Licensing Law

BILL ANALYSIS

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	August 10, 2005
Introduced by:	Reps. Culpepper, Howard, Brubaker	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to Third Edition H1284-CSRU-74		

SUMMARY: ***The Senate Committee Substitute for House Bill 1284 would amend the real estate licensing laws to eliminate real estate salespersons licenses making all licensed real estate agents real estate brokers as of April 1, 2006. The bill would also allow a real estate broker who holds money in trust for parties to a real estate transaction to deposit the money with the clerk of court to resolve a dispute of ownership of the money after 90-days notice. Senate Bill 1120, a companion bill introduced by Sen. Rand, is currently in Senate Commerce.***

CURRENT LAW: Under Article 1 of Chapter 93A of the General Statutes, the North Carolina Real Estate Commission is directed to issue two types of real estate licenses to persons legally authorized to sell real property for compensation in NC, namely a real estate salesperson license and a real estate broker license. A real estate salesperson must operate under the supervision of a real estate broker. A real estate salesperson must complete a 67-hour real estate course prior to taking the real estate salesperson exam. A real estate salesperson has to take an additional 60-hour course to become a real estate broker.

The bill increases the fee a real estate course sponsor pays to the Commission to certify the applicant's completion of an approved course from $5 to $10.

BILL ANALYSIS: Sections 5 and 7 of the bill eliminate the licensed position of real estate salesperson as of April 1, 2006, converts all current real estate salespersons to provisional brokers, and establishes a procedure for real estate salespersona to become real estate brokers, and for some real estate brokers to become brokers-in-charge

Section 5 changes the number of prelicensing classroom hours needed to become a real estate broker from 60 hours in addition to the 67 hours for a real estate salesperson license to a single course of 75 hours. In addition, all provisional brokers will have to complete an additional 90-hour post-licensing course within 3 years after being licensed as a provisional broker in order to become a real estate broker. Failure to complete the postlicensing course within 3 years will result in the license being cancelled until the course is completed. A provisional broker is exempt from the 90-hour postlicensing course if he or she possesses equivalent real estate education or experience.

Section 7 defines a broker-in-charge, being someone under whose supervision a provisional broker may work, as a real estate broker with at least 2 years of brokerage experience and the completion of a broker-in-charge course not to exceed 12 hours.

Section 7 also sets out the transition process for converting real estate salespersons to real estate brokers, and prescribes qualification requirements for brokers-in-charge. On April 1, 2006 all salespersons licenses will be converted to broker licenses and the holder of the broker license will be classified as a provisional broker.

A provisional broker who was issued a salesperson license prior to October 1, 2005 may terminate provisional status by completing one of the following requirements by April 1, 2008:

- Complete a broker transition course not to exceed 24 classroom hours.
- Demonstrate to the Commission that he or she possesses four years of full-time real estate brokerage experience or equivalent part-time brokerage experience within the previous six years

If the provisional broker fails to satisfy one of the above requirements by April 1, 2008, then he or she must take the 90-hour postlicensing course.

A provisional broker who was issued a salesperson license between October 1, 2005, and March 31, 2006 may become a broker by completing one of the following requirements by April 1, 2009:

- Satisfactorily complete the 90-hour postlicensing course.
- Possess equivalent real estate education or experience in real estate transactions.

If the provisional broker fails to satisfy one of the above requirements by April 1, 2009, then his or her broker license is cancelled.

A person licensed as a broker prior to April 1, 2006 shall not be required to take the 90-hour postlicensing course.

No applications for a real estate salesperson license will be accepted between September 1, 2005 and September 30, 2005.

Section 2 requires all provisional brokers to work under the supervision of a broker-in-charge until they fulfill the requirements to be licensed as a broker.

Section 10 authorizes the Commission to take custody of documents or materials obtained by subpoena in order to photocopy them. Current law only allows the Commission to examine the documents or materials obtained by a subpoena.

Section 11 provides that an applicant from a reciprocal state has 90 days after establishing residency in North Carolina to obtain a North Carolina license without taking the licensing examination.

Section 12 adds a new section to the Article to provide that a broker, may deposit with the clerk of court, disputed earnest money, other than a residential security deposit, for determination of the rightful owner. The broker must provide notice to the persons claiming ownership that the money is to be deposited and that the person may initiate a special proceeding with the clerk of court to recover the disputed monies. In order to give the parties an opportunity to settle the dispute, the monies may not be deposited until 90 days following notification. Current law requires a broker to hold disputed earnest monies until the parties resolve ownership, which may never happen.

The remaining sections of the bill contain technical and conforming changes to the real estate licensing law to reflect the changes made in Sections 5 and 7 of the bill.

EFFECTIVE DATE: The transition provisions of Section 7 designated as the new G.S. 93A-4.3 become effective when the bill becomes law. Sections 6, 12 and 24 of the bill become effective October 1, 2005. The remainder of the bill becomes effective April 1, 2006.

Martha Walston, counsel to House Finance Committee, substantially contributed to this summary.

H1284e3-SMRU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1284

Committee Substitute Favorable 6/21/05
Third Edition Engrossed 6/29/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1284-CSRU-74 [v.3]

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Short Title: Improve Real Estate Licensing Law. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate ~~brokers and real estate salespersons.~~brokers.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate ~~broker or real estate salesperson,~~ broker, or directly or indirectly to engage or assume to engage in the business of real estate broker ~~or real estate salesperson~~ or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker ~~or salesperson~~ in this State."

SECTION 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4.3, must be supervised by a broker-in-charge when performing any act for which a real estate license is required."

SECTION 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who ~~under the supervision of a real estate broker~~

~~designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.~~was formerly licensed by the Commission as a real estate salesperson before April 1, 2006."

SECTION 4. G.S. 93A-3 reads as rewritten:

"**§ 93A-3. Commission created; compensation; organization.**

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate ~~brokers or real estate salespersons.~~brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

...

(c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker ~~or salesperson~~ to negotiate any real estate transaction on behalf of another.

...."

SECTION 5. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker ~~or real estate salesperson~~ shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each

applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course.~~ Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least ~~60~~ 75 hours of classroom instruction in subjects determined by the Commission, ~~which shall be in addition to the course required for a real estate salesperson license,~~ or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be cancelled, and the Commission may, in its discretion, require the person whose license was cancelled to satisfy the postlicensing education program and the requirements for original licensure prescribed in this Chapter as a condition of license reinstatement, including the examination requirements and the license reinstatement fee prescribed by subsection (c) of this section.

(a2) An approved school shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker ~~or a license as real estate salesperson~~ shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the

Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. ~~A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.~~ A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character of each applicant for licensure and require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker ~~or real estate salesperson~~ in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

...."

SECTION 6. G.S. 93A-4A is recodified as G.S. 93A-4.1 and reads as rewritten:

"**§ ~~93A-4A.~~93A-4.1 Continuing education.**

(a) The Commission shall establish a program of continuing education for real estate ~~brokers and salespersons.~~brokers. An individual licensed as a real estate broker ~~or salesperson~~ is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate ~~broker or salesperson.~~broker.

(a1) ~~In addition to the requirements of subsection (a) of this section, the~~The Commission ~~may~~may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course ~~of study, not to exceed six classroom hours every three~~

~~years,~~ consisting of not more than four classroom hours of instruction in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers ~~and salespersons~~ while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt any reasonable rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.
(2) The curriculum of courses required.
(3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers and salespersons not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars ($125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval.

~~The Commission may also require a~~ An approved course sponsor ~~to~~ shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor. ~~The fee shall not exceed five dollars ($5.00) per licensee.~~

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars ($50.00)."

SECTION 7. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new sections to read:

"**§ 93A-4.2. Broker-in-charge qualification.**

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least two years of full-time real estate brokerage experience or

equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience, and shall complete, within a time prescribed by the Commission, a course of study prescribed by the Commission for brokers-in-charge not to exceed 12 classroom hours of instruction. A provisional broker may not be designated as a broker-in-charge.

"**§ 93A-4.3. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

(a) Effective April 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective April 1, 2006, all salesperson licenses shall become broker licenses, and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).

(b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than April 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by April 1, 2008, the provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by April 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

(c) An approved school or sponsor shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and March 31, 2006, shall, not later than April 1, 2009, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by April 1, 2009, the broker's license shall be cancelled, and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).

(e) A broker who was issued a broker license prior to April 1, 2006, shall not be required to complete either the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.

(f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or after the October 1, 2005, or April 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on April 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on April 1, 2006, the applicant's application shall be cancelled and the application fee refunded.

(g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005."

SECTION 8. G.S. 93A-5 reads as rewritten:

"**§ 93A-5. Register of applicants; roster of ~~brokers and salespersons;~~brokers; financial report to Secretary of State.**

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate ~~brokers and real estate salespersons;~~brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers ~~and real estate salespersons~~ holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission."

SECTION 9. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of

superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 10. G.S. 93A-6.1(a) reads as rewritten:

"(a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for ~~inspection.~~inspection or deliver the same into the custody of the Commission's authorized representatives. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court."

SECTION 11. G.S. 93A-9 reads as rewritten:

"**§ 93A-9. Licensing nonresidents.**

(a) An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers ~~and salespersons~~ from North Carolina. A license applicant who has been a resident of North Carolina for not more than 90 days may be considered by the Commission as a nonresident for the purposes of this subsection.

(b) The Commission may issue a limited broker's ~~or salesperson's~~ license to a person or an entity from another state or territory of the United States without regard to whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:

(1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.

(2) Only engages in business as a real estate broker ~~or salesperson~~ in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate ~~broker or salesperson.~~broker.

(3) Complies with the laws of this State regulating real estate brokers and ~~salespersons and~~ rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars ($300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate ~~broker or salesperson,~~broker, and the resident North Carolina real estate broker ~~or salesperson~~ shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate ~~brokers or salespersons;~~ brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers ~~or salespersons~~ and persons or entities seeking licensure under this subsection."

SECTION 12. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new section to read:

"**§ 93A-12. Disputed monies.**

(a) A real estate broker licensed under this Chapter may deposit with the clerk of court in accordance with this section, monies, other than a residential security deposit, the ownership of which are in dispute and that the real estate broker received while acting in a fiduciary capacity.

(b) The disputed monies shall be deposited with the clerk of court in the county in which the property for which the disputed monies are being held is located. At the time of depositing the disputed monies, the real estate broker shall certify to the clerk of court that the persons who are claiming ownership of the disputed monies have been notified in accordance with subsection (c) of this section that the disputed monies are to be deposited with the clerk of court and that the persons may initiate a special proceeding with the clerk of court to recover the disputed monies.

(c) Notice to the persons who are claiming ownership to the disputed monies required under subsection (b) of this section shall be provided by delivering a copy of the notice to the person or by mailing it to the person by first class mail, post-paid, properly addressed to the person at the person's last known address.

(d) A real estate broker shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies.

(e) Upon the filing of a special proceeding to recover the disputed monies, the clerk shall determine the rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the disputed monies shall be deemed unclaimed and shall be delivered by the clerk of court to State Treasurer in accordance with the provisions of Article 4 of Chapter 116B of the General Statutes."

SECTION 13. G.S. 93A-16(a) reads as rewritten:

"(a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate ~~broker or salesperson licensed under this Chapter.~~salesperson licensed before April 1, 2006, or by any real estate broker."

SECTION 14. G.S. 93A-17 reads as rewritten:

"§ 93A-17. Grounds for payment; notice and application to Commission.

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate ~~broker or~~ salesperson licensed before April 1, 2006, or by any licensed real estate broker ~~under this Chapter~~ shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount

remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesperson acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms "licensee", "broker", and "salesperson" shall include only individual persons licensed under this Chapter as brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons prior to April 1, 2006. The terms "licensee", "broker", and "salesperson" ~~and~~ shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

SECTION 15. G.S. 93A-22 reads as rewritten:

"**§ 93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, ~~the~~ any license ~~of~~ issued to the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

SECTION 16. G.S. 93A-32(2) reads as rewritten:

"(2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, ~~corporation~~ corporation, limited liability company or association, and which conducts, for a profit or tuition charge, real estate ~~salesperson or~~ broker prelicensing or postlicensing courses prescribed by ~~G.S. 93A-4(a),~~G.S. 93A-4(a) or (a1), provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate school."

SECTION 17. G.S. 93A-34 reads as rewritten:

"**§ 93A-34. License required; application for license; fees; requirements for issuance of license.**

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license is first obtained from the Commission in accordance with the provisions of this

Article and the rules and regulations promulgated by the Commission under this Article. For licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each school location and fifty dollars ($50.00) for each real estate ~~salesperson or~~ broker prelicensing or postlicensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

(1) Name and address of the applicant and the school;
(2) Names, biographical data, and qualifications of director, administrators and instructors;
(3) Description of school facilities and equipment;
(4) Description of course(s) to be offered and instructional materials to be utilized;
(5) Information on financial resources available to equip and operate the school;
(6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;
(7) Copies of bulletins, catalogues and other official publications;
(8) Copy of bond required by G.S. 93A-36;
(9) Such additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.
(2) The director, administrators and instructors are adequately qualified by reason of education and experience.
(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.
(4) The school has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
(5) The school publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as

being true and correct in content and policy by an authorized school official, and which contains the following information:

a. Identifying data and publication date;
b. Name(s) of school and its full-time officials and faculty;
c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;
d. Detailed schedule of tuition and fees;
e. Detailed course outline of all courses offered.

(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.

(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.

(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.

(9) The school's owner(s), director, administrators and instructors are of good reputation and character.

(10) The ~~school complies~~school's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding ~~safety and sanitation of facilities.~~health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.

(11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest."

SECTION 18. G.S. 93A-38(6) reads as rewritten:

"**§ 93A-38. Suspension, revocation or denial of license.**

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

...

(6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, ~~or~~ any partner of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court."

SECTION 19. G.S. 93A-40 reads as rewritten:

"§ 93A-40. Registration required of time share projects; real estate ~~salespersons~~ license required.

(a) ~~From and after July 1, 1984, it~~It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first obtaining a real estate broker ~~or salesperson~~ license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

SECTION 20. G.S. 93A-41(7a) reads as rewritten:

"(7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers ~~and salespersons~~ at the time share project;".

SECTION 21. G.S. 93A-50 reads as rewritten:

"§ 93A-50. Securities laws apply.

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker ~~or salesperson~~ registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36."

SECTION 22. G.S. 93A-52 reads as rewritten:

"§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed ~~fifteen hundred dollars ($1500),~~ one thousand five hundred dollars ($1,500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's time share salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

...

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a ~~late filing~~ fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

SECTION 23. G.S. 93A-54 reads as rewritten:

"**§ 93A-54. Disciplinary action by Commission.**

(a) The Commission has power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson,

developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

...

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesperson,~~salespersons, advertising or otherwise;

...

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker ~~or salesperson~~ or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

SECTION 24. G.S. 93A-58(c) reads as rewritten:

"(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all ~~persons licensed as~~ time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons ~~licensed as brokers or salespersons~~ at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter."

SECTION 25. G.S. 115D-5(h) reads as rewritten:

"(h) Whenever a community college offers real estate continuing education courses pursuant to ~~G.S. 93A-4A~~ G.S. 93A-4.1, the courses shall be offered on a self-supporting basis."

SECTION 26. This section and G.S. 93A-4.3, as enacted in Section 7 of this act, are effective when this act becomes law. Sections 6, 12 and 25 of this act become effective October 1, 2005. The remainder of the act becomes effective April 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1284

Committee Substitute Favorable 6/21/05
Third Edition Engrossed 6/29/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1284-PCS30366-RU-74

Short Title: Improve Real Estate Licensing Law. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate ~~brokers and real estate salespersons.~~brokers.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate ~~broker or real estate salesperson,~~ broker, or directly or indirectly to engage or assume to engage in the business of real estate broker ~~or real estate salesperson~~ or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker ~~or salesperson~~ in this State."

SECTION 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4.3, must be supervised by a broker-in-charge when performing any act for which a real estate license is required."

SECTION 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who ~~under the supervision of a real estate broker~~

~~designated as broker in charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.~~was formerly licensed by the Commission as a real estate salesperson before April 1, 2006."

SECTION 4. G.S. 93A-3 reads as rewritten:

"**§ 93A-3. Commission created; compensation; organization.**

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate ~~brokers or real estate salespersons.~~brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

...

(c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker ~~or salesperson~~ to negotiate any real estate transaction on behalf of another.

...."

SECTION 5. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker ~~or real estate salesperson~~ shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each

applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course.~~ Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least ~~60~~ 75 hours of classroom instruction in subjects determined by the Commission, ~~which shall be in addition to the course required for a real estate salesperson license,~~ or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be cancelled, and the Commission may, in its discretion, require the person whose license was cancelled to satisfy the postlicensing education program and the requirements for original licensure prescribed in this Chapter as a condition of license reinstatement, including the examination requirements and the license reinstatement fee prescribed by subsection (c) of this section.

(a2) An approved school shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker ~~or a license as real estate salesperson~~ shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the

Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. ~~A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.~~ A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character of each applicant for licensure and require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker ~~or real estate salesperson~~ in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

...."

SECTION 6. G.S. 93A-4A is recodified as G.S. 93A-4.1 and reads as rewritten:

"**§ ~~93A-4A.~~93A-4.1. Continuing education.**

(a) The Commission shall establish a program of continuing education for real estate ~~brokers and salespersons.~~brokers. An individual licensed as a real estate broker ~~or salesperson~~ is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate ~~broker or salesperson.~~broker.

(a1) ~~In addition to the requirements of subsection (a) of this section, the~~The Commission ~~may~~ may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course ~~of study, not to exceed six classroom hours every three~~

~~years,~~ consisting of not more than four classroom hours of instruction in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers ~~and salespersons~~ while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt any reasonable rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.
(2) The curriculum of courses required.
(3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers and salespersons not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars ($125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval.

~~The Commission may also require a~~ An approved course sponsor ~~to~~ shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor. ~~The fee shall not exceed five dollars ($5.00) per licensee.~~

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars ($50.00)."

SECTION 7. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new sections to read:

"**§ 93A-4.2. Broker-in-charge qualification.**

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least two years of full-time real estate brokerage experience or

equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience and shall complete, within a time prescribed by the Commission, a course of study prescribed by the Commission for brokers-in-charge not to exceed 12 classroom hours of instruction. A provisional broker may not be designated as a broker-in-charge.

"**§ 93A-4.3. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

(a) Effective April 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective April 1, 2006, all salesperson licenses shall become broker licenses, and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).

(b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than April 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years' full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by April 1, 2008, the provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by April 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

(c) An approved school or sponsor shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and March 31, 2006, shall, not later than April 1, 2009, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by April 1, 2009, the broker's license shall be cancelled, and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).

(e) A broker who was issued a broker license prior to April 1, 2006, shall not be required to complete either the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.

(f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or after the October 1, 2005, or April 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on April 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on April 1, 2006, the applicant's application shall be cancelled and the application fee refunded.

(g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005."

SECTION 8. G.S. 93A-5 reads as rewritten:

"**§ 93A-5. Register of applicants; roster of ~~brokers and salespersons;~~brokers; financial report to Secretary of State.**

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate ~~brokers and real estate salespersons,~~brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers ~~and real estate salespersons~~ holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission."

SECTION 9. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.
(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.
(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.
(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.
(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.
(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.
(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.
(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.
(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.
(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.
(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.
(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.
(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of

superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 10. G.S. 93A-6.1(a) reads as rewritten:

"(a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for ~~inspection.~~inspection or deliver the same into the custody of the Commission's authorized representatives. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court."

SECTION 11. G.S. 93A-9 reads as rewritten:

"**§ 93A-9. Licensing nonresidents.**

(a) An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers ~~and salespersons~~ from North Carolina. A license applicant who has been a resident of North Carolina for not more than 90 days may be considered by the Commission as a nonresident for the purposes of this subsection.

(b) The Commission may issue a limited broker's ~~or salesperson's~~ license to a person or an entity from another state or territory of the United States without regard to whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:

(1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.

(2) Only engages in business as a real estate broker ~~or salesperson~~ in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate ~~broker or salesperson.~~broker.

(3) Complies with the laws of this State regulating real estate brokers and ~~salespersons and~~ rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars ($300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate ~~broker or salesperson,~~broker, and the resident North Carolina real estate broker ~~or salesperson~~ shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate ~~brokers or salespersons;~~ brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers ~~or salespersons~~ and persons or entities seeking licensure under this subsection."

SECTION 12. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new section to read:

"**§ 93A-12. Disputed monies.**

(a) A real estate broker licensed under this Chapter may deposit with the clerk of court in accordance with this section monies, other than a residential security deposit, the ownership of which are in dispute and that the real estate broker received while acting in a fiduciary capacity.

(b) The disputed monies shall be deposited with the clerk of court in the county in which the property for which the disputed monies are being held is located. At the time of depositing the disputed monies, the real estate broker shall certify to the clerk of court that the persons who are claiming ownership of the disputed monies have been notified in accordance with subsection (c) of this section that the disputed monies are to be deposited with the clerk of court and that the persons may initiate a special proceeding with the clerk of court to recover the disputed monies.

(c) Notice to the persons who are claiming ownership to the disputed monies required under subsection (b) of this section shall be provided by delivering a copy of the notice to the person or by mailing it to the person by first-class mail, postpaid, properly addressed to the person at the person's last known address.

(d) A real estate broker shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies.

(e) Upon the filing of a special proceeding to recover the disputed monies, the clerk shall determine the rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the disputed monies shall be deemed unclaimed and shall be delivered by the clerk of court to the State Treasurer in accordance with the provisions of Article 4 of Chapter 116B of the General Statutes."

SECTION 13. G.S. 93A-16(a) reads as rewritten:

"(a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate ~~broker or salesperson licensed under this Chapter.~~salesperson licensed before April 1, 2006, or by any real estate broker."

SECTION 14. G.S. 93A-17 reads as rewritten:

"**§ 93A-17. Grounds for payment; notice and application to Commission.**

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate ~~broker or~~ salesperson licensed before April 1, 2006, or by any licensed real estate broker ~~under this Chapter~~ shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount

remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesperson acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms "licensee", "broker", and "salesperson" shall include only individual persons licensed under this Chapter as brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons prior to April 1, 2006. The terms "licensee", "broker", and "salesperson" ~~and~~ shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

SECTION 15. G.S. 93A-22 reads as rewritten:

"**§ 93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, ~~the~~ any license ~~of~~ issued to the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

SECTION 16. G.S. 93A-32(2) reads as rewritten:

"(2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, ~~corporation~~ corporation, limited liability company, or association, and which conducts, for a profit or tuition charge, real estate ~~salesperson or~~ broker prelicensing or postlicensing courses prescribed by ~~G.S. 93A-4(a),~~G.S. 93A-4(a) or (a1), provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate school."

SECTION 17. G.S. 93A-34 reads as rewritten:

"**§ 93A-34. License required; application for license; fees; requirements for issuance of license.**

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license is first obtained from the Commission in accordance with the provisions of this

Article and the rules and regulations promulgated by the Commission under this Article. For licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each school location and fifty dollars ($50.00) for each real estate ~~salesperson or~~ broker prelicensing or postlicensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

(1) Name and address of the applicant and the school;
(2) Names, biographical data, and qualifications of director, administrators and instructors;
(3) Description of school facilities and equipment;
(4) Description of course(s) to be offered and instructional materials to be utilized;
(5) Information on financial resources available to equip and operate the school;
(6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;
(7) Copies of bulletins, catalogues and other official publications;
(8) Copy of bond required by G.S. 93A-36;
(9) Such additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.
(2) The director, administrators and instructors are adequately qualified by reason of education and experience.
(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.
(4) The school has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
(5) The school publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as

being true and correct in content and policy by an authorized school official, and which contains the following information:

a. Identifying data and publication date;

b. Name(s) of school and its full-time officials and faculty;

c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;

d. Detailed schedule of tuition and fees;

e. Detailed course outline of all courses offered.

(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.

(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.

(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.

(9) The school's owner(s), director, administrators and instructors are of good reputation and character.

(10) The ~~school complies~~school's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding ~~safety and sanitation of facilities.~~health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.

(11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest."

SECTION 18. G.S. 93A-38(6) reads as rewritten:

"**§ 93A-38. Suspension, revocation or denial of license.**

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

...

(6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, ~~or~~ any partner of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court."

SECTION 19. G.S. 93A-40 reads as rewritten:

"**§ 93A-40. Registration required of time share projects; real estate ~~salespersons~~ license required.**

(a) ~~From and after July 1, 1984, it~~It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first obtaining a real estate broker ~~or salesperson~~ license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

SECTION 20. G.S. 93A-41(7a) reads as rewritten:

"(7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers ~~and salespersons~~ at the time share project;".

SECTION 21. G.S. 93A-50 reads as rewritten:

"**§ 93A-50. Securities laws apply.**

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker ~~or salesperson~~ registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36."

SECTION 22. G.S. 93A-52 reads as rewritten:

"**§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.**

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed ~~fifteen hundred dollars ($1500),~~ one thousand five hundred dollars ($1,500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's time share salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

...

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a ~~late filing~~ fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

SECTION 23. G.S. 93A-54 reads as rewritten:

"**§ 93A-54. Disciplinary action by Commission.**

(a) The Commission has power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson,

developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

...

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesperson,~~salespersons, advertising or otherwise;

...

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker ~~or salesperson~~ or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

SECTION 24. G.S. 93A-58(c) reads as rewritten:

"(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all ~~persons licensed as~~ time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons ~~licensed as brokers or salespersons~~ at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter."

SECTION 25. G.S. 115D-5(h) reads as rewritten:

"(h) Whenever a community college offers real estate continuing education courses pursuant to ~~G.S. 93A-4A,~~G.S. 93A-4.1, the courses shall be offered on a self-supporting basis."

SECTION 26. This section and G.S. 93A-4.3, as enacted in Section 7 of this act, are effective when this act becomes law. Sections 6, 12, and 25 of this act become effective October 1, 2005. The remainder of the act becomes effective April 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 630

Committee Substitute Favorable 5/4/05
Third Edition Engrossed 5/12/05

Short Title: Manufactured Homes Escrow Accounts. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOMES ESCROW ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.21A(d) reads as rewritten:

"(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing ~~terms, unless the financing terms are more favorable to the buyer,~~ terms, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired."

SECTION 2. G.S. 143-143.21A(f) reads as rewritten:

"(f) ~~The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars ($2,000).~~ The dealer shall place all deposits made by the buyer in an escrow account. After the expiration of the three-day cancellation period in subsection (d) of this section, the dealer may use the deposit funds to complete the steps necessary for site preparation of property owned by the buyer if approved by the buyer. The dealer shall not use deposit funds to develop and complete sites not owned by the buyer. ~~To the extent practicable, the rules shall protect the~~ The deposits held by the dealer in the escrow account required by this subsection shall be free from the claims of the creditors of a

~~dealer that may thereafter be in bankruptcy.~~ dealer. The ~~rules shall further provide for~~ funds held in the escrow account shall be subject to the same requirements of subsection (d) of this section requiring the prompt return of a buyer's deposit if the buyer is entitled to its return."

SECTION 3. This act is effective when it becomes law.

Summary of Draft PCS for HB 630

(Prepared by Bill Rowe, NC Justice Center, (919) 856-2177, bill@ncjustice.org)

Section 1 (p.1) – Technical Statutory drafting designation.

Section 2 (pp.2-3) – Definitions related to escrow requirement.

Section 3 (pp.3-5) – (1) Increases the Manufactured Housing Board from 9 to 11 members by adding a home-ownership counselor and an accountant. (2) Ends the process whereby certain members of the Board are selected from a list submitted by the Manufactured Housing Institute. (3) Gives the Board the authority to conduct random audits of escrow/trust accounts.

Section 4 (pp.5-6) - Adds failure to comply with escrow requirements as basis for "denying, suspending or revoking" a license.

Section 5 (p.6) – Requires dealers to display the price, individual cost of specifications and options, and estimated set-up costs for homes.

Section 6 (pp.6-9) – (1) Establishes a sales procedure where no money is paid by the buyer, nor is any set-up work performed until there is a final manufactured home retail sales contract is executed. (2) The dealer must return the buyer's deposit within three business days after receipt of the notice of cancellation from the buyer.

Section 7 (pp.9-11) – (1) Establishes the requirement that all deposits be placed in an escrow account and certain procedures be met in handling the escrow funds. (2) Escrow funds cannot be used until after the three day right of cancellation has passed. (3) Funds may be used for site preparation of property owned by the buyer when approved in advance in writing. (4) Board is authorized to fine a dealer who fails to place deposits in escrow up to the deposit amount.

Section 8 (p.10) – Sets effective dates for sections of the bill.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 630

Committee Substitute Favorable 5/4/05
Third Edition Engrossed 5/12/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H630-CSSU-26 [v.1]

8/9/2005 2:56:23 PM

Short Title: Manufactured Homes Escrow Accounts. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOME DEALERS TO ESTABLISH AND MAINTAIN ESCROW OR TRUST ACCOUNTS FOR BUYER DEPOSITS; TO CLARIFY THE CONTRACT NEGOTIATION PROCESS AND EXTEND THE CANCELLATION PERIOD; TO CHANGE THE MEMBERSHIP OF THE NORTH CAROLINA MANUFACTURED HOUSING BOARD; AND TO PROVIDE BUYERS WITH INFORMATION REGARDING THE PRICE OF MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.8 through G.S. 143-143.25 of Article 9A of Chapter 143 of the General Statutes are redesignated as Part 1 of Article 9A of Chapter 143 of the General Statutes to be entitled "Part 1. Duties, Warranties, Purchase Transaction.". The Revisor of Statutes is authorized to make changes in the newly designated Part 1 that will reflect the results of the recodification.

SECTION 2. G.S. 143-143.9 reads as rewritten:

"**§ 143-143.9. Definitions.**

The following definitions apply in this Article:

(1) ~~Board. – The North Carolina Manufactured Housing Board~~ Bank. – A federally insured financial institution including institutions defined under G.S. 53-1(1), savings and loan associations, credit unions, savings banks and other financial institutions chartered under this or any other state law or chartered under federal law.

(1a) Board. – The North Carolina Manufactured Housing Board.

(2) Buyer. – A person ~~who purchases at retail from a dealer or manufacturer~~ for whom a dealer performs, or is engaged to perform, any services or provides any products including the purchase and setup

of a manufactured home for ~~personal~~ use as a residence or other related use.

(3) Code. – Engineering standards adopted by the Commissioner.

(4) Commissioner. – The Commissioner of Insurance of the State of North Carolina.

(5) Department. – The Department of Insurance of the State of North Carolina.

(5a) Deposit. – Any and all funds received by a dealer from a buyer or someone on behalf of a buyer for the performance of services or the provision of goods.

(5b) Escrow or trust account. – An account with a bank that is designated as an escrow account or as a trust account and that is maintained by a dealer for the deposit of buyers' funds.

(5c) Escrow or trust account funds. – Funds belonging to a person other than the dealer that are received by or placed under the control of the dealer in connection with the performance of services or the provision of products by a dealer for a buyer.

(5d) Funds. – Any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers. The term does not include letters of credit or promissory notes.

~~(5a)~~(5e) License. – A license issued under this Article.

~~(5b)~~(5f) Licensee. – A person who has been issued a license under this Article by the North Carolina Manufactured Housing Board.

(6) Manufactured home. – A structure, transportable in one or more sections, which, in the ~~travelling~~ traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(7) Manufactured home dealer or dealer. – Any person engaged in the business of buying or selling manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

(8) Manufactured home manufacturer or manufacturer. – Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.

(9) Manufactured home salesperson or salesperson. – Any person employed by a manufactured home dealer to sell manufactured homes to buyers. Manufactured home salesperson or salesperson also includes sales managers, lot managers, general managers, or others who manage or supervise salespersons.

(10) Person. – Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

(11) Responsible party. – A manufacturer, dealer, supplier, or set-up contractor.

(12) Setup. – The operations performed at the occupancy site which render a manufactured home fit for habitation.

(13) Set-up contractor. – A person who engages in the business of performing setups for compensation in North Carolina.

(14) Substantial defect. – Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.

(15) Supplier. – The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, ~~panelling~~paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer."

SECTION 3. G.S. 143-143.10 reads as rewritten:

"**§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.**

(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of ~~nine~~ eleven members as follows:

(1) The Commissioner of Insurance or ~~his~~ the Commissioner's designee.

(2) A manufactured home manufacturer.

(3) A manufactured home dealer.

(4) A representative of the banking and finance ~~business~~ industry.

(5) A representative of the insurance industry.

(6) A manufactured home supplier.

(7) A set-up contractor.

(8) Two representatives of the general public.

(9) A person who is employed with a HUD-approved housing counseling agency in the State.

(10) An accountant.

The Commissioner or ~~his~~ the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance ~~industry~~ industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home ~~supplier~~ supplier, the accountant, and the set up contractor. The Commissioner shall appoint two representatives of the general public. ~~Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board.~~ The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The ~~member~~ members of the Board ~~representing the general public~~ designated in subdivisions (8), (9), and (10) of this subsection shall have no current or previous financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the unexpended funds collected and received during that year. The remaining eighty-five percent (85%) of these funds shall be credited to the General Fund.

(b) In accordance with the provisions of this Article, the Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, salespersons, and set-up contractors.

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salespersons.
(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this Article.
(4) To adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.
(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.
(6) To request that the Department of Justice conduct criminal history checks of applicants for licensure pursuant to G.S. 114-19.13.
(7) To conduct random audits of dealer escrow or trust accounts."

SECTION 4. G.S. 143-143.13(a) reads as rewritten:

"(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) Making a material misstatement in application for license.
(2) Failing to post an adequate corporate surety bond, cash bond or fixed value equivalent.
(3) Engaging in the business of manufactured home manufacturer, dealer, salesperson, or set-up contractor without first obtaining a license from the Board.
(4) Failing to comply with the warranty service obligations and claims procedure established by this Article.
(5) Failing to comply with the set-up requirements established by this Article.
(6) Failing or refusing to account for or to pay over moneys or other valuables belonging to others that have come into licensee's possession arising out of the sale of manufactured homes.
(6a) Failing to comply with the escrow or trust account provisions of Part 2 of this Article.
(7) Using unfair methods of competition or committing unfair or deceptive acts or practices.
(8) Failing to comply with any provision of this Article.
(9) Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board after proper notice or failing to comply with orders of the Board issued pursuant to this Article.
(10) Employing unlicensed salespersons.
(11) Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.
(12) Conviction of any crime listed in G.S. 143-143.10A.

(13) Having had a license revoked, suspended or denied by the Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Article.

(14) Employing or contracting with any person to perform setups who is not licensed by the Board as a set-up contractor."

SECTION 5. G.S. 143-143.20A reads as rewritten:

"**§ 143-143.20A. Display of pricing on manufactured ~~homes~~homes; notice of warranties.**

(a) ~~If the manufacturer of a manufactured home publishes a manufacturer's suggested retail price that price shall be displayed near the front entrance of the manufactured home.~~ The dealer shall prominently display the following information at the front entrance of each manufactured home:

(1) The price of the home.

(2) The individual cost of the specifications and options included in or available for the home.

(3) A statement of estimated set-up costs not included in the price of the home.

(b) Each manufactured home dealer shall prominently display a sign and provide to each buyer a notice, developed by the North Carolina Manufactured Housing Board, containing information about the Board, including how to file a consumer complaint with the Board and the warranties and protections provided for each new manufactured home under federal and State law."

SECTION 6. G.S. 143-143.21A reads as rewritten:

"**§ 143-143.21A. ~~Purchase agreements~~Conditional sales contract; final manufactured home retail installment sales contract; buyer cancellations.**

(a) A ~~purchase agreement~~conditional sales contract for a manufactured home shall include all of the following:

(1) A description of the manufactured home and all accessories included in the purchase.

(2) The purchase price for the home and all accessories.

(3) The estimated amount of deposit ~~or other payment toward or payment of~~ to be paid by the buyer towards the purchase price of the manufactured home and ~~accessories that is made by the buyer~~accessories.

(4) The date the ~~retail purchase agreement~~ conditional sales contract is signed.

(5) The estimated terms of financing of the purchase, if any, including the estimated interest rate, number of years financed, and the amount of the monthly payment.

(6) The buyer's signature.

(7) The dealer's signature.

(a1) The conditional sales contract shall also contain in at least 10 point, all uppercase Gothic type the following statement in immediate proximity to the space reserved for the signature of the buyer:

'I UNDERSTAND THIS IS NOT A BINDING AGREEMENT AND THAT I DO NOT HAVE TO PAY ANY MONEY TOWARDS THE PURCHASE OF A MANUFACTURED HOME UNTIL I SIGN A FINAL MANUFACTURED HOME RETAIL INSTALLMENT SALES CONTRACT. IN THE EVENT THAT I INTEND TO PURCHASE A NEW MANUFACTURED HOME OR A NEW MANUFACTURED HOME WITH LAND, I UNDERSTAND THAT NOTHING IN A CONTRACT CAN PREVENT ME FROM HAVING AN APPRAISAL OF THE MANUFACTURED HOME OR LAND PERFORMED AT MY OWN COST.'

(a2) At the time the buyer and the dealer execute the conditional sales contract, the dealer shall provide to the buyer an executed copy of the document. If the buyer intends to obtain financing to purchase the home, the buyer shall have the option of obtaining financing independently of the dealer or to have the dealer arrange for the financing. If the dealer arranges the financing through referral or otherwise, the provisions of Chapter 25A of the General Statutes shall apply. The dealer shall also disclose in writing to the buyer any business relationship the dealer has with any of the financial entities or appraisers. Even if the dealer is arranging the financing, the buyer may have an appraisal of the manufactured home or land performed at the buyer's own cost.

(a3) The dealer shall not request, demand, or accept any funds from a buyer prior to the execution of a final manufactured home retail installment sales contract. The dealer shall not commence set-up procedures until after the expiration of the five-day right to cancel period after the buyer and the dealer execute a final sales contract as required by this section.

(a4) In addition to any other provisions required by law, the final sales contract shall include all of the following:

(1) A description of the manufactured home and all accessories included in the purchase.

(2) The purchase price for the home and all accessories.

(3) The amount of deposit to be paid by the buyer towards the purchase price of the manufactured home and accessories.

(4) The date the final manufactured home retail installment sales contract is signed.

(5) The final terms of financing of the purchase, if any, including the interest rate, number of years financed, and the amount of the monthly payment.

(6) The buyer's signature.

(7) The dealer's signature.

(8) The date of the third business day after the date the buyer executes the final manufactured home retail installment sales contract.

(b) The ~~purchase agreement~~ final manufactured home retail installment sales contract shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, the following statement:

"I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS ~~AGREEMENT~~ CONTRACT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER. ~~I UNDERSTAND ANY CHANGE TO THE TERMS OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS AGREEMENT.~~"

(c) At the time the ~~deposit or other payment toward or payment for the purchase price is received by the dealer,~~dealer receives the buyer's deposit, the dealer shall give the buyer ~~a~~ an executed copy of the ~~purchase agreement~~final manufactured home retail installment sales contract and a completed form in duplicate, captioned "Notice ~~of Cancellation," which~~ of Cancellation". The Notice of Cancellation shall be attached to the ~~purchase agreement~~executed copy of the final sales contract, be easily detachable, and explain the buyer's right to cancel the purchase and how that right can be exercised.

(d) The dealer shall return the deposit ~~or other payment toward or payment for the purchase price~~ to the buyer if the buyer cancels the purchase before midnight of the ~~third~~ fifth business day after the date the buyer signed the ~~purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer~~ final manufactured home retail installment sales contract. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit ~~or other payment toward or payment for the purchase price~~ to the buyer within ~~15~~ three business days after receipt of the notice of ~~cancellation or within three business days of any change by the dealer of the purchase agreement.~~cancellation. For purposes of this section, "business day" means any day except Sunday and legal holidays. ~~Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired.~~

(e) If the buyer cancels the purchase after the three-day cancellation ~~period, but before the sale is completed.~~period. and ~~if~~:

(1) ~~The~~the manufactured home ~~is~~ had been in the dealer's inventory, the dealer may retain from the deposit ~~or other payment received from the buyer~~ actual damages up to a maximum of ten percent (10%) of the purchase ~~price; or~~price.

(2) ~~The~~If the buyer cancels the purchase after the three-day cancellation period, and the manufactured home ~~is~~was specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's ~~deposit or other payment received from the buyer.~~deposit.

~~(f) The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars ($2,000). To the extent practicable, the rules shall protect the deposits from the claims of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further provide for the prompt return of a buyer's deposit if the buyer is entitled to its return."~~

SECTION 7. Article 9A of Chapter 143 of the General Statutes is amended by adding the following new Part to read:

"Part 2. Buyer Deposit, Escrow or Trust Accounts.

"**§ 143-143.50. Escrow or trust account required.**

(a) Dealers shall maintain buyers' deposits in an escrow or trust account with a bank. A dealer shall not commingle any other funds with buyers' deposits in the escrow or trust account. The account shall not be interest bearing.

(b) Dealers shall notify the Board in writing when the escrow or trust account is established. The notification shall include the name and number of the account and the name and location of the bank holding the account.

(c) All buyer funds shall be placed in the escrow or trust account no later than the close of the second banking business day after receipt.

(d) Dealers shall provide buyers with a receipt for all buyer deposits received by the dealer. The receipt shall include the amount of the buyer deposit, the date the deposit was provided to the dealer, and the name and address of the bank where the buyer's funds will be deposited.

"**§ 143-143.51. Use of escrow or trust funds; penalty for violations.**

(a) Buyer funds in the dealer's escrow or trust account shall be held for the benefit of the buyer and may only be used for purposes authorized under the contractual obligations of the dealer to the buyer for the direct benefit of the buyer for whom the funds are held. No buyer funds in the dealer's escrow or trust account may be used by the dealer until after the three-day right of cancellation period as set forth in G.S. 143-143.21A has expired. All contractual obligations of the dealer must be satisfied prior to disbursement of buyer funds in the dealer's escrow or trust account for the benefit of the dealer, except the dealer may use buyer funds to complete the steps necessary for site preparation of property owned by the buyer, when approved in writing in advance by the buyer. Buyer funds in the dealer's escrow or trust account shall be promptly returned to the buyers when the buyer is entitled to return of the funds in accordance with G.S. 143-143.21A.

(b) Notwithstanding any other provision of law and in addition to any other sanction the Board may impose under this Article, if the Board finds that a dealer has used a buyer's funds for a purpose that is not authorized under subsection (a) of this section or if the Board finds that a dealer has failed to place deposits in the dealer's escrow or trust account, the Board may fine the dealer an amount up to the amount that the dealer misappropriated or failed to place in the account.

"**§ 143-143.52. Minimum requirements for dealer records for escrow or trust accounts at banks.**

The minimum records required for escrow or trust accounts maintained at a bank shall consist of the following:

(1) All bank receipts or deposit slips listing the source and date of receipt of all funds deposited in the account and the name of the buyer to whom the funds belong.

(2) All cancelled checks or other instruments drawn on the account, or printed digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement.

(3) All instructions or authorizations to transfer, disburse, or withdraw funds from the escrow or trust account.

(4) All bank statements and other documents received from the bank with respect to the escrow or trust account, including notices of return or dishonor of any instrument drawn on the account against insufficient funds.

(5) A ledger containing a record of receipts and disbursements for each buyer from whom and for whom funds are received and showing the current balance of funds held in the escrow or trust account for each buyer.

(6) Any other records required by law to be maintained for the escrow or trust account.

"**§ 143-143.53. Quarterly reconciliation of escrow or trust accounts.**

At least quarterly, individual buyer balances shown on the ledger of an escrow or trust account shall be totaled and reconciled with the current bank balance for the trust account as a whole.

"**§ 143-143.54. Accountings for escrow or trust funds.**

The dealer shall provide to the buyer a written accounting of the receipts and disbursements of all escrow or trust funds upon the complete disbursement of the escrow or trust accounts, upon the request of the buyer, and at least quarterly if the funds are retained for a period of more than three months.

"**§ 143-143.55. Audits and record inspection.**

All financial records required by this Part shall be subject to audit for cause and to random audit at the discretion of and by the Board, the Commissioner, or the Attorney General. The Board may inspect these records periodically, without prior notice and may also inspect these records whenever the Board determines that the records are pertinent to an investigation of any complaint against a licensee. The dealer shall provide written authorization to the bank that holds the escrow or trust account to release any and all information relative to the account to the parties authorized under this section to inspect those records."

SECTION 8. Sections 1, 2, 3, 4 and 8 of this act become effective October 1, 2005. The remainder of this act becomes effective January 1, 2006. Appointment of members to the North Carolina Manufactured Housing Board under Section 3 of this act for any positions existing prior to the effective date of Section 3 shall be effective upon the completion of the existing term, terminating on or after the effective date of this act. Appointment of new members to the North Carolina Manufactured Housing Board under Section 3 of this act shall be effective on October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 576

Committee Substitute Favorable 3/28/05

Third Edition Engrossed 3/31/05

Short Title: Simply Bid Process/Small Comm. Coll. Projects. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE BID PROCESS FOR SMALL COMMUNITY COLLEGE CAPITAL IMPROVEMENT PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain projects.**

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission and Community College Capital Improvement Projects where the estimated expenditure of public money is less than one hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).

(c) A community college capital improvement project where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the State Board of Community Colleges."

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

HOUSE BILL 576:
Simplify Bid Process/Small Comm. Coll. Projects

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 14, 2005
Introduced by:	Reps. Tolson, Sauls, England	**Summary by:**	O. Walker Reagan
Version:	PCS to Third Edition H576-CSRU-55		Committee Co-Counsel

SUMMARY: The Proposed Senate Committee Substitute for House Bill 576 would allow community college capital improvement projects to be exempted from the public advertising requirements for design services where the expenditure of public funds is less than $100,000. The bill would also allow an exemption from the public advertising requirements for design services for a community college capital improvement project that uses less than $300,000 of public funds in certain situations. In addition, the bill would prohibit the use of reverse auctions for the procurement of certain professional services by State and local governments, as well as private entities that receive public money as an incentive.

CURRENT LAW: For the procurement of design services such as architectural, engineering, and surveying services, State law allows agencies to advertise their requirements without regard to fees and then negotiate the price with the best qualified company. State capital improvement projects under the State Building Commission that are estimated to cost less than $100,000 of public funds are exempted from the public advertising requirements. However, all community college capital improvement projects are subject to the advertising requirements regardless of the cost of the project. Capital improvement projects of the University of North Carolina are also exempt from the announcement requirement for projects less than $300,000 if the design services are to be rendered under an open-end design agreement that has been publicly announced and complies with the procedures adopted by the University and approved by the State Building Commission.

BILL ANALYSIS:

The Proposed Senate Committee Substitute for House Bill 576 would bring community college capital improvement projects under the same exemption from the public advertising requirements for design services that are allowed for State capital improvement projects for projects with estimated public expenditures of less than $100,000. The bill would also allow an exemption from the advertising requirements for a community college capital improvement project that is estimated to cost less than $300,000 if the design services to be rendered are under a publicly announced open-end design agreement that complies with policies and procedures adopted by the State Board of Community Colleges and approved by the State Building Commission.

The PCS provides that a public entity may not use reverse auction as a method of procurement of architectural, engineering, surveying or construction management at risk services. It also prohibits a private entity from using reverse auction if it has received an economic development incentive with respect to the project.

EFFECTIVE DATE: The bill would become effective October 1, 2005.

Drupti Chauhan, counsel to House Community College Subcommittee, and Canaan Huie, staff attorney with the Bill Drafting Division, substantially contributed to this summary.

H0576e3-SMRU-CSRU-55

§ 143-129.9. Alternative competitive bidding methods.

(a) A political subdivision of the State may use any of the following methods to obtain competitive bids for the purchase of apparatus, supplies, materials, or equipment as an alternative to the otherwise applicable requirements in this Article:

(1) Reverse auction. – For purposes of this section, "reverse auction" means a real-time purchasing process in which bidders compete to provide goods at the lowest selling price in an open and interactive environment. The bidders' prices may be revealed during the reverse auction. A reverse auction may be conducted by the political subdivision or by a third party under contract with the political subdivision. A political subdivision may also conduct a reverse auction through the State electronic procurement system, and compliance with the procedures and requirements of the State's reverse auction process satisfies the political subdivision's obligations under this Article.

(2) Electronic bidding. – A political subdivision may receive bids electronically in addition to or instead of paper bids. Procedures for receipt of electronic bids for contracts that are subject to the requirements of G.S. 143-129 shall be designed to ensure the security, authenticity, and confidentiality of the bids to at least the same extent as is provided for with sealed paper bids.

(b) The requirements for advertisement of bidding opportunities, timeliness of the receipt of bids, the standard for the award of contracts, and all other requirements in this Article that are not inconsistent with the methods authorized in this section shall apply to contracts awarded under this section.

(c) Reverse auctions shall not be utilized for the purchase or acquisition of construction aggregates, including, but not limited to, crushed stone, sand, and gravel. (2002-107, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 576

Committee Substitute Favorable 3/28/05
Third Edition Engrossed 3/31/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H576-CSRU-55 [v.10]

8/5/2005 3:00:47 PM

Short Title: Procurement of Professional Services. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE BID PROCESS FOR SMALL COMMUNITY COLLEGE CAPITAL IMPROVEMENT PROJECTS AND TO PROHIBIT THE USE OF REVERSE AUCTIONS FOR THE PROCUREMENT OF ARCHITECTURAL, ENGINEERING, SURVEYING, CONSTRUCTION MANAGEMENT AT-RISK OR CONSTRUCTION SERVICES BY A STATE OR LOCAL GOVERNMENT OR BY A PRIVATE ENTITY THAT HAS RECEIVED PUBLIC MONEY AS AN INCENTIVE TO COMPLETE THE PROJECT WITH RESPECT TO WHICH THE SERVICES ARE REQUIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain projects.**

(a) State ~~Capital Improvement Projects~~ capital improvement projects under the jurisdiction of the State Building Commission and community college capital improvement projects, where the estimated expenditure of public money is less than one hundred thousand dollars ~~($100,000)~~($100,000), are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article ~~if:~~if all of the following apply:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design ~~agreement;~~agreement.

(2) The open-end design agreement has been publicly ~~announced; and~~announced.

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).

(c) A community college capital improvement project where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if all of the following apply:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement.

(2) The open-end design agreement has been publicly announced.

(3) The open-end design agreement complies with procedures adopted by the State Board of Community Colleges and approved by the State Building Commission."

SECTION 2. G.S. 143-135.26(12) reads as rewritten:

"**§ 143-135.26. Powers and duties of the Commission.**

The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

...

(12) To adopt rules governing the use of open-end design agreements for State capital improvement projects and community college buildings as defined in subdivision (4) of this section, where the ~~fee~~ expenditure of public money does not exceed the amount specified in ~~G.S. 143-64.34(b).~~ G.S. 143-64.34(b) or (c).

...."

SECTION 3. G.S. 143-64.31 is amended by adding a new subsection to read:

"(c) Notwithstanding the provisions of this Article exempting certain projects from the provisions of this Article, in no case shall a public entity use reverse auction, as defined in G.S. 143-129.9, as a method of procuring architectural, engineering, surveying, construction management at-risk, or other construction services."

SECTION 4. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-437.07. Reverse auctions for procurement of architectural, engineering, surveying, construction management at-risk and other construction services prohibited.**

It is unlawful for any business that receives an economic development incentive from the State or a local government to utilize reverse auction, as defined in G.S. 143-129.9, as a method of obtaining architectural, engineering, surveying, construction management at-risk, or other construction services with respect to the property or facility with respect to which the economic development incentive was provided. A business that receives an economic development incentive from the State or a local government shall comply with the provisions of G.S. 143-64.31 as if it were a public entity and shall submit the report required by that section to the Secretary of Administration and to the agency that administers the economic development incentive that the business received. A business that violates this section forfeits the economic

development incentive received and must repay any amount received as an economic development incentive to the State or local government."

SECTION 5. This act is effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

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Committee Substitute Favorable 3/28/05

Third Edition Engrossed 3/31/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H576-CSRU-55 [v.10]

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SECTION 5. This act is effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 576

Committee Substitute Favorable 3/28/05
Third Edition Engrossed 3/31/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H576-PCS70550-RU-55

Short Title: Procurement of Professional Services. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE BID PROCESS FOR SMALL COMMUNITY COLLEGE CAPITAL IMPROVEMENT PROJECTS AND TO PROHIBIT THE USE OF REVERSE AUCTIONS FOR THE PROCUREMENT OF ARCHITECTURAL, ENGINEERING, SURVEYING, CONSTRUCTION MANAGEMENT AT-RISK, OR CONSTRUCTION SERVICES BY A STATE OR LOCAL GOVERNMENT OR BY A PRIVATE ENTITY THAT HAS RECEIVED PUBLIC MONEY AS AN INCENTIVE TO COMPLETE THE PROJECT WITH RESPECT TO WHICH THE SERVICES ARE REQUIRED.

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SECTION 4. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-437.07. Reverse auctions for procurement of architectural, engineering, surveying, construction management at-risk, and other construction services prohibited.**

It is unlawful for any business that receives an economic development incentive from the State or a local government to utilize reverse auction, as defined in G.S. 143-129.9, as a method of obtaining architectural, engineering, surveying, construction management at-risk, or other construction services with respect to the property or facility with respect to which the economic development incentive was provided. A business that receives an economic development incentive from the State or a local government shall comply with the provisions of G.S. 143-64.31 as if it were a public entity and shall submit the report required by that section to the Secretary of Administration and to the agency that administers the economic development incentive that the business received. A business that violates this section forfeits the economic

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SECTION 5. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 576

Committee Substitute Favorable 3/28/05

Third Edition Engrossed 3/31/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H576-PCS70550-RU-55

Short Title: Procurement of Professional Services. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE BID PROCESS FOR SMALL COMMUNITY COLLEGE CAPITAL IMPROVEMENT PROJECTS AND TO PROHIBIT THE USE OF REVERSE AUCTIONS FOR THE PROCUREMENT OF ARCHITECTURAL, ENGINEERING, SURVEYING, CONSTRUCTION MANAGEMENT AT-RISK, OR CONSTRUCTION SERVICES BY A STATE OR LOCAL GOVERNMENT OR BY A PRIVATE ENTITY THAT HAS RECEIVED PUBLIC MONEY AS AN INCENTIVE TO COMPLETE THE PROJECT WITH RESPECT TO WHICH THE SERVICES ARE REQUIRED.

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(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).

(c) A community college capital improvement project where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if all of the following apply:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement.

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The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

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...."

SECTION 3. G.S. 143-64.31 is amended by adding a new subsection to read:

"(c) Notwithstanding the provisions of this Article exempting certain projects from the provisions of this Article, in no case shall a public entity use reverse auction, as defined in G.S. 143-129.9, as a method of procuring architectural, engineering, surveying, construction management at-risk, or other construction services."

SECTION 4. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-437.07. Reverse auctions for procurement of architectural, engineering, surveying, construction management at-risk, and other construction services prohibited.**

It is unlawful for any business that receives an economic development incentive from the State or a local government to utilize reverse auction, as defined in G.S. 143-129.9, as a method of obtaining architectural, engineering, surveying, construction management at-risk, or other construction services with respect to the property or facility with respect to which the economic development incentive was provided. A business that receives an economic development incentive from the State or a local government shall comply with the provisions of G.S. 143-64.31 as if it were a public entity and shall submit the report required by that section to the Secretary of Administration and to the agency that administers the economic development incentive that the business received. A business that violates this section forfeits the economic

development incentive received and must repay any amount received as an economic development incentive to the State or local government."

SECTION 5. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1416

Short Title:	An Act to Amend the ABC Election Law.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Alcoholic Beverage Control.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TOWNS OR CITIES WHERE A RAILROAD PASSENGER TERMINUS EXISTS ELIGIBLE TO HOLD MALT BEVERAGE PERMIT ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-600 is amended by adding a new subsection to read:

"(h) Railroad Passenger Terminus Location Elections. – Notwithstanding any other provision of this section, any city or town that is the passenger terminus of a rail line that carries at least 60,000 passengers annually may hold an election authorized by subdivisions (a)(1) and (a)(2) of this section. Any election held under this subsection shall be for the on-premises sale of malt beverages and the on-premises sale of unfortified wine pursuant to G.S. 18B-602(a)(2) and G.S. 18B-602(d)(2)."

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

HOUSE BILL 1416:
An Act to Amend the ABC Election Law

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	May 31, 2005
Introduced by:	Rep. Haire	**Summary by:**	Brenda Carter,
Version:	First Edition		Staff Attorney

SUMMARY: House Bill 1416 would provide for malt beverage and unfortified wine elections in any city or town that is the passenger end point of a rail line that carries at least 60,000 passengers annually.

CURRENT LAW: G.S. 18B-600 prescribes the places eligible to hold alcoholic beverage elections. In general, a city may hold a malt beverage or unfortified wine election only if the county in which the city is located has already held such an election, the vote in the last county election was against the sale of that kind of alcoholic beverage, and the city has a population of 500 or more or the city operates an ABC store. Exceptions exist for ski resorts, cities located in two or more counties, and townships.

BILL ANALYSIS: House Bill 1416 would amend G.S. 18B-600 (Places eligible to hold alcoholic beverage elections) to provide for railroad passenger terminus location elections. Any city or town that is the passenger end point of a rail line that carries at least 60,000 passengers annually would be eligible to hold elections to permit the on-premises sale of malt beverages and unfortified wine. A known place that would be affected by this bill is Dillsboro, which is the site of the main depot and headquarters for the Great Smoky Mountains Railroad. Dillsboro is a community with a population of 205 as of the 2000 census. It is located in Jackson County, which is dry except for Sylva -- the county seat.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1261

Committee Substitute Favorable 5/9/05

Short Title: Wireless Telephone Service. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING WIRELESS TELEPHONE SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-21 reads as rewritten:

"**§ 62A-21. Definitions.**

As used in this Article:

...

(5) "CMRS provider" means a person or ~~entity~~ entity, facilities-based and nonfacilities-based, who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

...

(7a) "GIS mapping" means the development of a computerized geographical display system of roads and structures where emergency response may be required.

...

(9) "Mobile set telephone number" means the number assigned to a CMRS ~~connection.~~connection, including the 10-digit number assigned to a CMRS mobile phone.

...

(11a) "Primary PSAP" means the first point of reception of a 911 call by a public safety answering point.

(12) "Pseudoautomatic number identification" or "Pseudo-ANI" means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell ~~face.~~ face and is used to identify the approximate location of a wireless caller.

...

(13a) "Shared resources" means any element that is used for both receiving wire line 911 calls and wireless 911 calls and is an eligible expense under G.S. 62A-8 and G.S. 62A-25.

(13b) "Subscriber" means a person who subscribes to a CMRS service or prepaid wireless service.

(14) "Wireless 911 system" means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits ~~911.~~911 and complements a wireless Enhanced 911 system.

...

(15a) "Wireless Enhanced 911 State plan" means a document prepared, maintained, and updated by the Wireless 911 Board that provides for all aspects of the State's integrated wireless Enhanced 911 system, including the Board's determination of permitted uses of moneys from the Wireless Fund and the amounts disbursed from the Fund to CMRS providers and PSAPs.

...."

SECTION 2. G.S. 62A-22 reads as rewritten:

"**§ 62A-22. Wireless 911 Board.**

(a) There is created a Wireless 911 Board ("Board"), consisting of 13 members as follows:

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, three representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, two representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The State Chief Information Officer or the Chief Information Officer's designee, who shall serve as the chair.

A quorum of the Board shall consist of seven members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Members shall remain in office until their successors

are appointed and qualified. Vacancies ~~may~~ shall be filled in the same manner as the original appointment.

(b1) G.S. 14-234 shall apply to members, officers, and employees of the Board. Members, officers, and employees of the Board shall disclose any interest, direct or indirect, they have in any firm or corporation interested in contracting with the Board, and the nature of that interest shall be included in the Board's minutes. A member, officer, or employee of the Board shall not participate in decisions involving parties with whom they have a conflict of interest.

(b2) The Governor may remove any member for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d).

...."

SECTION 3. Article 2 of Chapter 62A is amended by adding the following new section to read:

"**§ 62A-22.1. Powers and duties of the Board.**

The Wireless 911 Board shall have the following powers and duties:

(1) To levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The service charge is not a tax.

(2) To make and enter into contracts and agreements necessary or incidental to the performance of its duties and powers under this Article, including purchase agreements that are paid with funds from the administrative fee allowed under G.S. 62A-26 and other moneys appropriated to or received by the Board for the wireless Enhanced 911 system.

(3) To accept gifts, grants, or other moneys for purposes of furthering the intent of this Article.

(4) To develop a comprehensive wireless Enhanced 911 telecommunications plan for communicating Enhanced 911 call information across networks and among PSAPs. In constructing and periodically updating the plan, the Board shall monitor trends and advances in wireless Enhanced 911 telecommunications technology, investigate and utilize development of other resources within the State as part of the wireless Enhanced 911 State plan, including GIS mapping and Voice over Internet Protocol (VoIP), and formulate strategies for the efficient and effective delivery of wireless Enhanced 911 telecommunications services.

(5) To provide or fund advisory services and training for PSAPs in accordance with policies and procedures established by the Board.

(6) To advocate for issues related to wireless Enhanced 911 system functions, features, and operations to improve the delivery of wireless Enhanced 911 services to residents of and visitors to the State.

(7) To take other necessary and proper action to implement the provisions of this Article."

SECTION 4. G.S. 62A-23 reads as rewritten:

"**§ 62A-23. Amount of service charge.**

(a) ~~The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection.~~ The rate of ~~such~~ the monthly wireless Enhanced 911 service charge shall ~~initially~~ be set at ~~eighty cents (80¢)~~seventy cents (70¢) per month per each CMRS connection beginning ~~October 1, 1998.~~October 1, 2005. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The ~~service charge may be adjusted by the~~ Board may adjust the service charge ~~beginning July 1, 2000 and every two years thereafter.~~on July 1st of every even-numbered year. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for primary PSAPs, over a reasonable period of time, of the costs allowed in G.S. 62A-25(b) and associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and eligible primary PSAPs over a reasonable period of time, the Board may annually adjust the allocation percentages set forth in G.S. 62A-25(a) and G.S. 62A-25(b), or reallocate funds comprising the Wireless Fund, provided, however, that any adjustment or reallocation shall be consistent with the requirements of the FCC Order.

...."

SECTION 5. G.S. 62A-24 reads as rewritten:

"**§ 62A-24. Management of funds.**

(a) Each CMRS provider, as a part of its monthly billing process, shall collect from its subscribers the wireless Enhanced 911 service charge described in G.S. 62A-23. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

...."

SECTION 6. G.S. 62A-25 reads as rewritten:

"**§ 62A-25. Use of funds.**

(a) ~~Sixty percent (60%)~~Fifty-three percent (53%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(b) ~~Forty percent (40%)~~Forty-seven percent (47%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to make monthly distributions to eligible primary PSAPs (the ~~"40%~~ "PSAP Fund"). Money from the ~~40%~~PSAP Fund shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, ~~and~~ nonrecurring costs of

establishing a wireless Enhanced 911 ~~system.~~system, and expenses related to shared resources. For purposes of this section, shared resources expenses are limited to those expenses identified in this section and G.S. 62A-8 and shall not exceed an amount determined reasonable by the Board. Money from the ~~40%~~PSAP Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The ~~40%~~PSAP Fund shall be distributed as follows:

(1) Fifty percent (50%) of it shall be divided equally among the total number of eligible primary PSAPs in North Carolina. However, monthly distribution shall be made only to those eligible primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. All monies remaining in this portion of the ~~40%~~ PSAP Fund on ~~January 31~~June 30 of each year will then be evenly distributed to each of the eligible primary PSAPs.

(2) The other fifty percent (50%) shall be divided pro rata among the eligible primary PSAPs based on the population served by the PSAP. However, monthly distribution shall be made only to those primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Budget and Management. All monies remaining in this portion of the ~~40%~~PSAP Fund on ~~January 31~~ June 30 of each year will then be distributed to each of the eligible primary PSAPs based on the population served by the primary PSAP.

...

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding the lesser of one hundred percent (100%) of the eligible costs allowed under G.S. 62A-25(b) or one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at a rate equal to the rate earned by the Wireless Fund until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the

operation of the wireless Enhanced 911 system. The PSAP budget shall identify revenues and expenditures for eligible expense reimbursements as provided in G.S. 62A-25(b).

...

(g) To receive funds under this section, a PSAP must comply with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations that are or may be adopted by the FCC pursuant to the FCC Order. A county or municipality that has one or more PSAPs shall submit in writing to the Board information that identifies the PSAPs in the manner required by the FCC Order."

SECTION 7. Article 2 of Chapter 62A of the General Statutes is amended by adding the following new section to read:

"**§ 62A-25.1. Unauthorized use of funds.**

The Board shall give written notice of violation to any CMRS provider or PSAP found by the Board to be using moneys from the Wireless Fund for purposes not authorized by this Article. Upon receipt of notice, the CMRS provider or PSAP shall cease making any unauthorized expenditures. The CMRS provider or PSAP may petition the Board for a hearing on the question of whether the expenditures were unauthorized, and the Board shall grant the request within a reasonable period of time. If, after the hearing, the Board concludes the expenditures were in fact unauthorized, the Board may require the CMRS provider or PSAP to refund the moneys improperly spent within 90 days, and the moneys shall be deposited into the Wireless Fund. If a CMRS provider or PSAP does not cease making unauthorized expenditures or refuses to refund improperly spent moneys, the Board may suspend funding to the provider or PSAP until corrective action is taken."

SECTION 8. Notwithstanding the provisions of G.S. 62A-22(b), to establish staggered terms of the members of the Wireless 911 Board, the terms of Joseph K. Durham, appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners; W. Allen Whitaker (a sheriff) and Don Van Liew (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and Robert Cherry (a chief of police), Philip L. Penny (representing the North Carolina Chapter of the National Emergency Number Association (NENA)), and James R. Montgomery (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, shall expire on June 30, 2005. The vacancies shall be filled in the same manner as the original appointments, and the persons appointed shall serve four-year terms, ending June 30, 2009. The terms of the remaining members of the Board shall expire on June 30, 2006. After the staggered terms have been established, members appointed to the Board thereafter shall serve four-year terms in accordance with G.S. 62A-22(b).

SECTION 9. This act is effective when it becomes law.

HOUSE BILL 1261:
Wireless Telephone Service

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	August 9, 2005
Introduced by:	Rep. Underhill	**Summary by:**	Steven Rose
Version:	PCS to Second Edition H1261-CSRL-42		Committee Counsel

SUMMARY: ***House Bill 1261 reduces monthly wireless Enhanced 911 service charge, changes the allocation of the funds from the Wireless Fund to CMRS providers and PSAPs, grants to the Wireless 911 Board the authority to order a CMRS provider or a PSAP to cease using Wireless Fund moneys for unauthorized purposes, provides a method for calculating and collecting service charges for prepaid wireless service subscribers, and establishes staggered terms for the Wireless 911 Board. It also establishes a number of new definitions. The act would become effective when it becomes law.***

CURRENT LAW: Article 2 of Chapter 62A of the General Statutes creates the funding and governance mechanism by which North Carolina is complying with the Federal Communications Commission's requirement (FCC Order) that 911 calls made from wireless telephone carriers provide the precise location of the 911 calls (wireless enhanced 911 system).

The Article creates the Wireless 911 Board which has 13 members: 2 appointed by the Governor, 5 appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, 5 appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and the State Chief Information Officer. The members serve for 4-year terms. The Article also establishes the Wireless Fund. The Board is charged with depositing the revenues collected from the wireless Enhanced 911 surcharge into the Fund and making disbursements from the Fund. The Board may deduct a 1% administrative fee for its expenses.

Each wireless telephone service provider (CMRS provider) must collect the surcharge on each mobile handset telephone number assigned to CMRS customer (CMRS connection). The fee is currently ¢80 per month. The Board has the authority to adjust the surcharge beginning July 1, 2000 and every 2 years thereafter. The purpose of the surcharge is to reimburse CMRS providers and the public service agencies that receive and dispatch 911 calls (PSAPs) for the cost of developing, implementing, and maintaining wireless Enhanced 911 service. The service charge is statutorily capped at ¢80 per month.

The statutes provide that 60% of the funds will go to CMRS providers for the actual costs incurred by the CMRS providers for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software to provide the service. 40% will go to eligible PSAPs to a Fund known as the 40% Fund. Those moneys may be used to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless database provisioning, and nonrecurring costs of establishing a wireless enhanced 911 systems. It can also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 systems. 50% of the moneys in the 40% Fund is divided equally among the total number of PSAPs in North Carolina and the other 50% is divided prorate among the eligible PSAPs based on the population served by the PSAP.

BILL ANALYSIS: **Section 1** modifies a number of existing definitions and enacts some new definitions.

Section 2 allows members to stay on the Board until their successors are appointed and qualified. It also articulates that members, officers, and employees of the Board are subject to G.S. 14-234, the criminal statutes that prohibit public officers and employees from benefiting from public contracts in which they have an interest. These provisions already applied to the Board, but this clarifies any ambiguity on this matter. The section also adds language that the Governor has the authority to remove any member of the Board for misfeasance, malfeasance, or nonfeasance under G.S. 143-13(d). Again, the Governor probably has this authority, but this clarifies any ambiguity.

Section 3 creates a new section in Article 2 that specifies the powers and duties of the Board. These powers include the development of a comprehensive wireless Enhanced 911 telecommunications plan for communicating Enhanced 911 call information across networks and among PSAPs.

Section 4 reduces the monthly surcharge from 80¢ to 70¢ per each CMRS connection beginning October 1, 2005. Also provides that each CMRS provider must collect the monthly surcharge from subscribers to prepaid wireless service and provides the methods of collection (either monthly from each subscriber or monthly by a calculation based on revenue from prepaid customers).

Section 5 clarifies that monthly billing of the surcharge applies to other than prepaid customers

Section 6 modifies the allocation of the Fund. CMRS providers would receive 53% of the funds, down from the current 60%. 47% of the Fund (up from 40%) would be divided among the eligible primary PSAPs. It also clarifies that a PSAP must comply with the wireless Enhanced 911 service requirements established by the FCC Order and any rules or regulations adopted by the FCC to implement the Order.

Section 7 creates G.S. 62A-25.1 which outlines the procedure the Board must use if it finds that a CMRS provider or PSAP is using moneys from the Fund for unauthorized purposes. The Board must notify the CMRS provider or the PSAP in writing. The CMRS provided or the PSAP must then cease making the expenditures, but may request a hearing before the Board. If the Board concludes the funds were spent for an unauthorized purpose, the provider or the PSAP must refund the moneys. The Board also has the authority to suspend funding until the provider or the PSAP take corrective action.

Section 8 establishes staggered Board terms by providing that six of the current Board members' terms expire June 30, 2005, and the remaining seven members' terms will expire June 30, 2006. Currently, all of the Board members' terms will expire June 30, 2006.

BACKGROUND: 911 is the official national emergency number in the United States and Canada. Dialing 911 connects the caller with a Public Safety Answering Point (PSAP) dispatcher trained to route the call to local emergency medical, fire, and law enforcement agencies. The FCC has also established a program requiring wireless telephone carriers to provide E911 capability. When fully implemented, wireless E911 will provide the precise location of 911 calls from wireless phones.

Kory Goldsmith, Counsel to the House Public Utilities Committee, and Cindy Avrette, Counsel to the House Finance Committee, contributed substantially to this summary.

H1261e2-SMRL-CSRL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1261

Committee Substitute Favorable 5/9/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1261-CSRLf-42 [v.3]

Short Title: 911/Wireless Service/Wire Expenses & Charges. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING WIRELESS TELEPHONE SERVICE, TO CLARIFY THE AUTHORIZED EXPENDITURES FROM THE EMERGENCY TELEPHONE SYSTEM FUND, TO CAP WIRE 911 SERVICE CHARGES, AND TO STUDY ISSUES RELATED TO ARTICLE 1 OF CHAPTER 62A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-21 reads as rewritten:

"**§ 62A-21. Definitions.**

As used in this Article:

(1) "Active prepaid wireless telephone service" means a prepaid wireless telephone service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.

~~(1)~~(1a) "Automatic location identification" or "ALI" means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.

...

(5) "CMRS provider" means a person or ~~entity~~ entity, facilities-based and nonfacilities-based, who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

...

(7a) "GIS mapping" means the development of a computerized geographical display system of roads and structures where emergency response may be required.

...

(9) "Mobile set telephone number" means the number assigned to a CMRS ~~connection.~~connection, including the 10-digit number assigned to a CMRS mobile phone.

(9a) "Prepaid wireless telephone service" means wireless telephone service for which no monthly invoices are received, that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminate either upon use by a customer and delivery by a CMRS provider or reseller of an agreed upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation unless additional payments are made.

...

(11a) "Primary PSAP" means the first point of reception of a 911 call by a public safety answering point.

(12) "Pseudoautomatic number identification" or "Pseudo-ANI" means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell ~~face.~~ face and is used to identify the approximate location of a wireless caller.

...

(13a) "Shared resources" means any element that is used for both receiving wire line 911 calls and wireless 911 calls and is an eligible expense under G.S. 62A-8 and G.S. 62A-25.

(13b) "Subscriber" means a person who subscribes to a CMRS service or prepaid wireless service.

(14) "Wireless 911 system" means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits ~~911.~~911 and complements a wireless Enhanced 911 system.

...

(15a) "Wireless Enhanced 911 State plan" means a document prepared, maintained, and updated by the Wireless 911 Board that provides for all aspects of the State's integrated wireless Enhanced 911 system, including the Board's determination of permitted uses of moneys from the Wireless Fund and the amounts disbursed from the Fund to CMRS providers and PSAPs.

...."

SECTION 2. G.S. 62A-22 reads as rewritten:

"**§ 62A-22. Wireless 911 Board.**

(a) There is created a Wireless 911 Board ("Board"), consisting of 13 members as follows:

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and

one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, three representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, two representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The State Chief Information Officer or the Chief Information Officer's designee, who shall serve as the chair.

A quorum of the Board shall consist of seven members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Members shall remain in office until their successors are appointed and qualified. Vacancies ~~may~~ shall be filled in the same manner as the original appointment.

(b1) G.S. 14-234 shall apply to members, officers, and employees of the Board. Members, officers, and employees of the Board shall disclose any interest, direct or indirect, they have in any firm or corporation interested in contracting with the Board, and the nature of that interest shall be included in the Board's minutes. A member, officer, or employee of the Board shall not participate in decisions involving parties with whom they have a conflict of interest.

(b2) The Governor may remove any member for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d).

...."

SECTION 3. Article 2 of Chapter 62A is amended by adding the following new section to read:

"**§ 62A-22.1. Powers and duties of the Board.**

The Wireless 911 Board shall have the following powers and duties:

(1) To levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The service charge is not a tax.

(2) To make and enter into contracts and agreements necessary or incidental to the performance of its duties and powers under this Article, including purchase agreements that are paid with funds from the administrative fee allowed under G.S. 62A-26 and other moneys appropriated to or received by the Board for the wireless Enhanced 911 system.

(3) To accept gifts, grants, or other moneys for purposes of furthering the intent of this Article.

(4) To develop a comprehensive wireless Enhanced 911 telecommunications plan for communicating Enhanced 911 call information across networks and among PSAPs. In constructing and periodically updating the plan, the Board shall monitor trends and advances in wireless Enhanced 911 telecommunications technology, investigate and utilize development of other resources within the State as part of the wireless Enhanced 911 State plan, including GIS mapping and Voice over Internet Protocol (VoIP), and formulate strategies for the efficient and effective delivery of wireless Enhanced 911 telecommunications services.

(5) To provide or fund advisory services and training for PSAPs in accordance with policies and procedures established by the Board.

(6) To advocate for issues related to wireless Enhanced 911 system functions, features, and operations to improve the delivery of wireless Enhanced 911 services to residents of and visitors to the State.

(7) To take other necessary and proper action to implement the provisions of this Article."

SECTION 4. G.S. 62A-23 reads as rewritten:

"**§ 62A-23. Amount of service charge.**

(a) ~~The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection.~~ The rate of ~~such~~ the monthly wireless Enhanced 911 service charge shall ~~initially~~ be set at ~~eighty cents (80¢)~~seventy cents (70¢) per month per each CMRS connection beginning ~~October 1, 1998.~~October 1, 2005. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The ~~service charge may be adjusted by the~~ Board may adjust the service charge ~~beginning July 1, 2000 and every two years thereafter.~~on July 1 of every even-numbered year. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for primary PSAPs, over a reasonable period of time, of the costs allowed in G.S. 62A-25(b) and associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and eligible primary PSAPs over a reasonable period of time, the Board may annually adjust the allocation percentages set forth in G.S. 62A-25(a) and G.S. 62A-25(b), or reallocate funds comprising the Wireless Fund, provided, however, that any adjustment or reallocation shall be consistent with the requirements of the FCC Order.

(b1) The service charge shall also be imposed upon prepaid wireless telephone service subscribers. CMRS providers of prepaid wireless telephone service shall collect and remit to the Board the service charge under one of the following methods:

(1) The CMRS provider shall collect, on a monthly basis, the service charge from each active prepaid wireless telephone service customer whose account balance is equal to or greater than the amount of the service charge; or

(2) The CMRS provider shall divide the total earned prepaid wireless telephone service revenue received by the CMRS provider with respect to each active prepaid wireless telephone service customer in the State within the monthly 911 reporting period by fifty dollars ($50.00), and multiply the quotient by the service charge amount.

...."

SECTION 5. G.S. 62A-24 reads as rewritten:

"**§ 62A-24. Management of funds.**

(a) ~~Each~~Except for prepaid wireless telephone service, each CMRS provider, as a part of its monthly billing process, shall collect from its subscribers the wireless Enhanced 911 service charge described in G.S. 62A-23. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

...."

SECTION 6. G.S. 62A-25 reads as rewritten:

"**§ 62A-25. Use of funds.**

(a) ~~Sixty percent (60%)~~Fifty-three percent (53%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(b) ~~Forty percent (40%)~~Forty-seven percent (47%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to make monthly distributions to eligible primary PSAPs (the ~~"40%~~ "PSAP Fund"). Money from the ~~40%~~PSAP Fund shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, ~~and~~ nonrecurring costs of establishing a wireless Enhanced 911 ~~system.~~system, and expenses related to shared resources. For purposes of this section, shared resources expenses are limited to those expenses identified in this section and G.S. 62A-8 and shall not exceed an amount determined reasonable by the Board. Money from the ~~40%~~PSAP Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The ~~40%~~PSAP Fund shall be distributed as follows:

(1) Fifty percent (50%) of it shall be divided equally among the total number of eligible primary PSAPs in North Carolina. However, monthly distribution shall be made only to those eligible primary PSAPs that have complied with the provisions of this Article.

Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. All monies remaining in this portion of the ~~40%~~ PSAP Fund on ~~January 31~~June 30 of each year will then be evenly distributed to each of the eligible primary PSAPs.

(2) The other fifty percent (50%) shall be divided pro rata among the eligible primary PSAPs based on the population served by the PSAP. However, monthly distribution shall be made only to those primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Budget and Management. All monies remaining in this portion of the ~~40%~~PSAP Fund on ~~January 31~~ June 30 of each year will then be distributed to each of the eligible primary PSAPs based on the population served by the primary PSAP.

...

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding the lesser of one hundred percent (100%) of the eligible costs allowed under G.S. 62A-25(b) or one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at a rate equal to the rate earned by the Wireless Fund until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the operation of the wireless Enhanced 911 system. The PSAP budget shall identify revenues and expenditures for eligible expense reimbursements as provided in G.S. 62A-25(b).

...

(g) To receive funds under this section, a PSAP must comply with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations that are or may be adopted by the FCC pursuant to the FCC Order. A county or municipality that has one or more PSAPs shall submit in writing to the Board information that identifies the PSAPs in the manner required by the FCC Order."

SECTION 7. Article 2 of Chapter 62A of the General Statutes is amended by adding the following new section to read:

"§ 62A-25.1. Unauthorized use of funds.

The Board shall give written notice of violation to any CMRS provider or PSAP found by the Board to be using moneys from the Wireless Fund for purposes not authorized by this Article. Upon receipt of notice, the CMRS provider or PSAP shall cease making any unauthorized expenditures. The CMRS provider or PSAP may petition the Board for a hearing on the question of whether the expenditures were unauthorized, and the Board shall grant the request within a reasonable period of time. If, after the hearing, the Board concludes the expenditures were in fact unauthorized, the Board may require the CMRS provider or PSAP to refund the moneys improperly spent within 90 days, and the moneys shall be deposited into the Wireless Fund. If a CMRS provider or PSAP does not cease making unauthorized expenditures or refuses to refund improperly spent moneys, the Board may suspend funding to the provider or PSAP until corrective action is taken."

SECTION 8. Notwithstanding the provisions of G.S. 62A-22(b), to establish staggered terms of the members of the Wireless 911 Board, the terms of Joseph K. Durham, appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners; W. Allen Whitaker (a sheriff) and Don Van Liew (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and Robert Cherry (a chief of police), Philip L. Penny (representing the North Carolina Chapter of the National Emergency Number Association (NENA)), and James R. Montgomery (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, shall expire on June 30, 2005. The vacancies shall be filled in the same manner as the original appointments, and the persons appointed shall serve four-year terms, ending June 30, 2009. The terms of the remaining members of the Board shall expire on June 30, 2006. After the staggered terms have been established, members appointed to the Board thereafter shall serve four-year terms in accordance with G.S. 62A-22(b).

SECTION 9. G.S. 62A-8(b) reads as rewritten:

"(b) The following expenses are not eligible for payment from the Fund: the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring, training, and compensating dispatchers, and the purchase of mobile communications vehicles, ambulances, fire engines, ~~or~~ other emergency ~~vehicles.~~vehicles, or any other expense not specifically authorized under subsection (a) of this section."

SECTION 10. The maximum 911 charge imposed by a local government under G.S. 62A-4 may not exceed the amount charged by the local government on July 1, 2005.

SECTION 11.(a) The Joint Legislative Utility Review Committee shall study the following issues related to Article 1 of Chapter 62A of the General Statutes:

(1) Mechanisms for increased accountability for the collection and spending of 911 charges by local governments.

(2) Modification of what constitutes an authorized expenditure from a local Emergency Telephone System Fund.

(3) Whether to adopt a statewide, uniform 911 charge.

(4) Whether to create a State Emergency Telephone Fund and a formula for distributing those moneys to local governments.

(5) Whether to designate the Community College System as the preferred provider of training for public safety answering point staff.

(6) Any other issues related to the Article the Committee determines are relevant.

SECTION 11.(b) The Committee shall report any findings and recommendations to the General Assembly upon the convening of the 2006 Regular Session of the 2005 General Assembly and upon the convening of the 2007 General Assembly.

SECTION 12. Section 10 of this act becomes effective July 1, 2005. The remainder of the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 669*

Committee Substitute Favorable 4/28/05

Third Edition Engrossed 5/5/05

Short Title: Oversize/Overweight Vehicle Changes.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW CONCERNING OVERSIZE AND OVERWEIGHT VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G. S. 20-96 reads as rewritten:

"**§ 20-96. Detaining property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until fines or penalties and taxes are collected.**

(a) Authority to Detain Vehicles. – A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

(5) Any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid.

(6) A property-hauling vehicle operating in violation of G.S. 20-119.

The officer may detain the vehicle until the delinquent fines or penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. – When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The motor carrier under whose authority the vehicle is being operated or the owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State shall not be liable for damage to the vehicle or loss of the property being hauled."

SECTION 2. G.S. 20-117 reads as rewritten:

"**§ 20-117. Flag or light at end of load.**

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products."

SECTION 3. G.S. 20-118(e) reads as rewritten:

"(e) Penalties. –

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section or axle weights authorized by special permit according to G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢)

per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section or of a permitted weight under G.S. 20-119 is not punishable under G.S. 20-176.

(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this subsection."

SECTION 4. G.S. 20-119 reads as rewritten:

"**§ 20-119. Special permits for vehicles of excessive ~~size,~~ size or weight; ~~weight, or number of units;~~ fees.**

(a) The Department of Transportation may, in ~~their~~ its discretion, upon application, for good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight ~~or number of units~~ exceeding a maximum specified in this Article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. However, the Department is not authorized to issue any permit to operate or move over the State highways twin trailers, commonly referred to as double bottom trailers. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer. The authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or weight exceeding the maximum expressed in this Article. The Department of Transportation shall issue rules to implement this section.~~section, but no rule shall provide that the permits issued pursuant to this section may be invalidated by law enforcement personnel.~~

(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of twelve dollars ($12.00) for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency.

(b1) Neither the Department nor the Board may require review or renewal of annual permits, with or without fee, more than once per calendar year.

(c) Nothing in this section shall require the Department of Transportation to issue any permit for any load.

(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of ~~Transportation~~ Crime Control and Public Safety may assess a ~~separate~~ civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with ~~escort vehicle requirements.~~the number of properly certified escort vehicles required.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection. In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).

(e) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the

fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S.120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

(f) The Department of Transportation shall issue rules to establish an escort driver training and certification program for escort vehicles accompanying oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet any training requirements and obtain certification under the rules issued pursuant to this subsection. These rules may provide for reciprocity with other states having similar escort certification programs. Certification credentials for the driver of an escort vehicle shall be carried in the vehicle and be readily available for inspection by law enforcement personnel. The escort and training certification requirements of this subsection shall not apply to the transportation of agricultural machinery until October 1, 2004. The Department of Transportation shall develop and implement an in-house training program for agricultural machinery escorts by September 1, 2004.

(g) The Department of Transportation shall issue annual overwidth permits for vehicles carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that do not exceed 14 feet in width. These permits shall be valid for unlimited movement without escorts on all State highways where the overwidth vehicles do not exceed posted bridge and load limits.

(h) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a permit valid at the time of the violation but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation, and the Department of Crime Control and Public Safety may not impose any fines under this section if the person submits evidence to the Department of the existence of a permit valid at the time of the violation within 30 days of the date of the violation."

SECTION 5. This act becomes effective July 1, 2005.

HOUSE BILL 669:
Oversize/Overweight Vehicle Changes.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	August 10, 2005
Introduced by:	Rep. Cole	**Summary by:**	Wendy Graf Ray
Version:	PCS to Third Edition H669-CSMA-24		Committee Counsel

SUMMARY: House Bill 669 would make changes to statutes concerning oversize and overweight vehicles.

BILL ANALYSIS:

Section 1. This section would authorize law enforcement officers to seize and detain property-hauling vehicles that are operating in violation of G.S. 20-119, which provides for special permits for vehicles that exceed size and weight limits allowed by law. An officer would be able to detain the vehicle until applicable penalties are paid.

Section 2. G.S. 20-117 requires that a flag or light (during hours of darkness) be displayed at the end of a load that extends more than 4 feet from the rear of the bed or body of a vehicle. Section 2 of the bill would specify that a load may not extend more than 14 feet from the end of the bed or body of the vehicle, with the exception of vehicles transporting forestry products.

Section 3. G.S. 20-118 sets out weight limits for vehicles operating on State highways, and it authorizes the Department of Transportation to establish "light-traffic roads" with weight limits that are lower than the statutory limits when, in the opinion of the Department, the road is inadequate to carry and will be injuriously affected by vehicles carrying the maximum weight. There are currently several exemptions from the light-traffic road limits. This section would add vehicles transporting supplies, material, or equipment necessary for the construction of housing or land development to the list of vehicles exempted from light-traffic road weight limits when the destination of the vehicle is located on the light-traffic road.

Section 4. G.S. 20-118(e) sets out civil penalties for violating vehicle weight limits allowed by law. This section would make those penalties also applicable to violations of weight limits authorized by special permits issued by the Department.

Section 5. This section would clarify that civil penalties assessed for violations of special permit conditions may also be assessed when a permit is required but has not been obtained. It would also authorize the Department to assess the penalties provided for violation of weight limits under G.S. 20-118 for violation of certain special permit conditions, in addition to the penalties specifically authorized for violation of special permit conditions under G.S. 20-119. However, penalties would not be allowed to exceed a maximum of $25,000.

EFFECTIVE DATE: The bill would become effective July 1, 2005.

H0669e2-SMSU-CSMA-24

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 669*

Committee Substitute Favorable 4/28/05

Third Edition Engrossed 5/5/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H669-CSMA-24 [v.3]

8/9/2005 3:29:23 PM

Short Title: Oversize/Overweight Vehicle Changes.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW CONCERNING OVERSIZE AND OVERWEIGHT VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G. S. 20-96 reads as rewritten:

"**§ 20-96. Detaining property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until fines or penalties and taxes are collected.**

(a) Authority to Detain Vehicles. – A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

(5) Any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid.

(6) A property-hauling vehicle operating in violation of G.S. 20-119.

The officer may detain the vehicle until the delinquent fines or penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. – When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The motor carrier under whose authority the vehicle is being operated or the owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State shall not be liable for damage to the vehicle or loss of the property being hauled."

SECTION 2. G.S. 20-117 reads as rewritten:

"**§ 20-117. Flag or light at end of load.**

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products."

SECTION 3. G.S. 20-118(c)(4) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(4) A truck or other motor vehicle shall be exempt from ~~such~~ the light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry ~~by-products or~~ by-products, a business engaged in the harvest or processing of ~~seafood~~ seafood, or when transporting supplies, material, or equipment necessary for the construction of housing or land development when the destination of ~~such~~ the vehicle and load is located solely upon ~~said~~ the light-traffic road."

SECTION 4. G.S. 20-118(e) reads as rewritten:

"(e) Penalties. –

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section or axle weights authorized by special permit according to G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional

pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section or of a permitted weight under G.S. 20-119 is not punishable under G.S. 20-176.

(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this subsection."

SECTION 5. G.S. 20-119 reads as rewritten:

"**§ 20-119. Special permits for vehicles of excessive ~~size, size~~ size or weight; ~~weight, or number of units;~~ fees.**

(a) The Department of Transportation may, in ~~their~~ its discretion, upon application, for good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight ~~or number of units~~ exceeding a maximum specified in this Article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. However, the Department is not authorized to issue any permit to operate

or move over the State highways twin trailers, commonly referred to as double bottom trailers. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer. The authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or weight exceeding the maximum expressed in this Article. The Department of Transportation shall issue rules to implement this section.~~section, but no rule shall provide that the permits issued pursuant to this section may be invalidated by law enforcement personnel.~~

(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of twelve dollars ($12.00) for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency.

(b1) Neither the Department nor the Board may require review or renewal of annual permits, with or without fee, more than once per calendar year.

(c) Nothing in this section shall require the Department of Transportation to issue any permit for any load.

(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of ~~Transportation~~ Crime Control and Public Safety may assess a ~~separate~~ civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with ~~escort vehicle requirements.~~the number of properly certified escort vehicles required.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection. In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).

(e) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S.120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

(f) The Department of Transportation shall issue rules to establish an escort driver training and certification program for escort vehicles accompanying oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet any training requirements and obtain certification under the rules issued pursuant to this subsection. These rules may provide for reciprocity with other states having similar escort certification programs. Certification credentials for the driver of an escort vehicle shall be carried in the vehicle and be readily available for inspection by law enforcement personnel. The escort and training certification requirements of this subsection shall not apply to the transportation of agricultural machinery until October 1, 2004. The Department of Transportation shall develop and implement an in-house training program for agricultural machinery escorts by September 1, 2004.

(g) The Department of Transportation shall issue annual overwidth permits for vehicles carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that do not exceed 14 feet in width. These permits shall be valid for unlimited movement without escorts on all State highways where the overwidth vehicles do not exceed posted bridge and load limits.

(h) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a permit valid at the time of the violation but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the

permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation, and the Department of Crime Control and Public Safety may not impose any fines under this section if the person submits evidence to the Department of the existence of a permit valid at the time of the violation within 30 days of the date of the violation."

SECTION 6. This act becomes effective July 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1669 DATE August 10, 2005

S. B. No. _____ Amendment No. 1

COMMITTEE SUBSTITUTE ✓ (to be filled in by Principal Clerk)

Rep.) Dalton
Sen.)

1 moves to amend the bill on page 2, line ~~11~~ 19

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "products."

4 and substituting "products and utility

5 poles."

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SIGNED Thomas Dalton

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 669*

Committee Substitute Favorable 4/28/05

Third Edition Engrossed 5/5/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H669-PCS30365-MA-24

Short Title: Oversize/Overweight Vehicle Changes.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW CONCERNING OVERSIZE AND OVERWEIGHT VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-96 reads as rewritten:

"**§ 20-96. Detaining property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until fines or penalties and taxes are collected.**

(a) Authority to Detain Vehicles. – A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

(5) Any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid.

(6) A property-hauling vehicle operating in violation of G.S. 20-119.

The officer may detain the vehicle until the delinquent fines or penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. – When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The motor carrier under whose authority the vehicle is being operated or the owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State shall not be liable for damage to the vehicle or loss of the property being hauled."

SECTION 2. G.S. 20-117 reads as rewritten:

"**§ 20-117. Flag or light at end of load.**

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles."

SECTION 3. G.S. 20-118(c)(4) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(4) A truck or other motor vehicle shall be exempt from ~~such~~ the light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry ~~by-products or~~ by-products, a business engaged in the harvest or processing of ~~seafood~~ seafood, or when transporting supplies, material, or equipment necessary for the construction of housing or land development when the destination of ~~such~~ the vehicle and load is located solely upon ~~said~~ the light-traffic road."

SECTION 4. G.S. 20-118(e) reads as rewritten:

"(e) Penalties. –

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section or axle weights authorized by special permit according to G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional

pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section or of a permitted weight under G.S. 20-119 is not punishable under G.S. 20-176.

(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this subsection."

SECTION 5. G.S. 20-119 reads as rewritten:

"**§ 20-119. Special permits for vehicles of excessive ~~size, size~~ size or weight; ~~weight, or number of units;~~ fees.**

(a) The Department of Transportation may, in ~~their~~ its discretion, upon application, for good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight ~~or number of units~~ exceeding a maximum specified in this Article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. However, the Department is not authorized to issue any permit to operate

or move over the State highways twin trailers, commonly referred to as double bottom trailers. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer. The authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or weight exceeding the maximum expressed in this Article. The Department of Transportation shall issue rules to implement this section.~~section, but no rule shall provide that the permits issued pursuant to this section may be invalidated by law enforcement personnel.~~

(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of twelve dollars ($12.00) for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency.

(b1) Neither the Department nor the Board may require review or renewal of annual permits, with or without fee, more than once per calendar year.

(c) Nothing in this section shall require the Department of Transportation to issue any permit for any load.

(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of ~~Transportation~~ Crime Control and Public Safety may assess a ~~separate~~ civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with ~~escort vehicle requirements.~~the number of properly certified escort vehicles required.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection. In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).

(e) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S.120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

(f) The Department of Transportation shall issue rules to establish an escort driver training and certification program for escort vehicles accompanying oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet any training requirements and obtain certification under the rules issued pursuant to this subsection. These rules may provide for reciprocity with other states having similar escort certification programs. Certification credentials for the driver of an escort vehicle shall be carried in the vehicle and be readily available for inspection by law enforcement personnel. The escort and training certification requirements of this subsection shall not apply to the transportation of agricultural machinery until October 1, 2004. The Department of Transportation shall develop and implement an in-house training program for agricultural machinery escorts by September 1, 2004.

(g) The Department of Transportation shall issue annual overwidth permits for vehicles carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that do not exceed 14 feet in width. These permits shall be valid for unlimited movement without escorts on all State highways where the overwidth vehicles do not exceed posted bridge and load limits.

(h) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a permit valid at the time of the violation but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the

permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation, and the Department of Crime Control and Public Safety may not impose any fines under this section if the person submits evidence to the Department of the existence of a permit valid at the time of the violation within 30 days of the date of the violation."

SECTION 6. This act becomes effective July 1, 2005.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Lisa Martin	NC Home Builders
	Ryde Cell & Stamps
Teresa Tinsley	NCACC
George Mills-pi	DOA
Tim Bradley	NC DOI
Kathleen Edwards	UNC-CH Institute of Gov't
Richard Taylor	NC Wireless 9/1 Board
Paula L. Hoyt	El Pueblo
Robert Jackson	AARP
Boyd Cauble	City of Charlotte

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bonsend Assoc.
Portia Manley	NCDOT/DMV
Wm Williamson	NCDOT/DMV
Jeffrey Edwards	NCDOT
[illegible]	NMRS
FRANK W. FOLGER	NCDOT
Robbie Quinn	NCDOT/DMV
Dana Simpson	Smith Anderson
DAVID BARNES	Poyner Spruill
John Polezaski	—
Lu-Ann Cole	CFA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Angie Hairr	Marpi Taylor
Scarlette Gardner	NCDOJ
Paul H. Stock	NCBA
Betty Turner	BAC
Pam Wescott	Sprint
[illegible]	[illegible]
Jane Fitzgerald	NC Family Policy Council
Alastair Macaulay	NCHBA
John Hoornoi	NCDOL
Art Britt	NCDOL
Cameron Hurtich	NCDOL
Jim Taylor	NCDOL

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Bobby V Dobson	NC NENA
Leslie Tripp	NC Wireless 911 Board
Larry Outlaw	NC Real Estate Commission
Stephanie Simpson	NC Assn of REALTORS
Rick Zechini	NC Assn of REALTORS

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Chris Estes	NC Housing Coalition
Bill Rowe	NC Justice Center
William Brewer	Brewer Law Firm

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCAHP
Andrew Ritter	NCBELS
Mell Ben	NCSS
Mitch Williams	Progress Energy
Kathy Hawkins	Progress Energy
Beatrice Williams	CUCA
Esther Ines Davis	Electricities
Joyce Davis	APPA
Dana Estes	Rep. Starn
Chris Kolda	SEE-HELP
Mark Fleming	UNC-Ag

Senate Commerce Committee
Wednesday, August 10, 2005, 2:30 PM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 670	CDL/Federal Compliance	Representative Cole
HB 687	Pirating Movies.	Representative McComas Representative Brubaker Representative Gibson, III Representative Wright
HB 735	Accident & Health Insur./Rate Stabilization.-AB	Representative Holliman Representative Wright
HB 768	2005 Omnibus Labor Law Changes.-AB	Representative Howard
HB 810	Amend Certain Land Surveyor Licensure Reqs.	Representative Gibson, III Representative Gillespie
HB 1174	ABC Permit Issuance and Compliance.	Representative Ross
HB 1299	Motor Vehicle Repairs/Clarify Cost of Repair.	Representative Bordsen
HB 1539	UNC/Amend Umstead Act.	Representative Yongue Representative Brubaker Representative Haire Representative Daughtridge, Jr.
HB 1541	Homeowner Association Amendments.	Representative Earle Representative Barnhart Representative Weiss Representative Stam

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Wednesday, August 10, 2005 (2:30 p.m.)
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 2:30 p.m. on August 10, 2005, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Representative Bill Daughtridge to explain HB 1539 UNC/Amend Umstead Act. Senator David Hoyle moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Hoyle moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Representative Alice Bordsen to explain HB 1299, Motor Vehicle Repairs/Clarify Cost of Repair. Senator Tony Rand moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Nelson Cole to explain HB 670, CDL/Federal Compliance. Senator Phil Berger moved the adoption of a committee substitute for purposes of discussion. The motion carried. Mr. Jeff Edwards, Assistant Attorney General for the Division of Motor Vehicles, explained the bill further. Senator Rand moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles again recognized Representative Cole to explain HB 665, Amend House Mover Laws.-AB. Senator Rand moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Pryor Gibson to explain HB 687, Pirating Movies. Senator Tom Apodaca moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Julia Howard to explain HB 768, 2006 Omnibus Labor Law Changes.-AB. Senator Linda Garrou moved the adoption of a committee substitute for discussion purposes. The motion carried. Senator Nesbitt moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. Mr. John Humani, Attorney for the Department of Labor spoke for the bill. The motion carried.

Senator Soles recognized Representative Mitch Gillespie to explain HB 810, Amend Certain Land Surveyor Licensure Reqs. Senator Tony Rand moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Ed McMahan to explain HB 1464, Repeal Sunsset on UNC Design Contracts/Report. Senator Rand moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Deborah Ross to explain HB 1174, ABC Permit Issuance and Compliance. Senator Jim Forrester moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator Richard Stevens moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Senator Scott Thomas to explain HB 1240, Vacation Rental Act Amendments, for Representative Bill Culpepper. Senator Apodaca moved a favorable report of the bill. The motion carried.

Senator Soles recognized Representative Jennifer Weiss and Representative Paul Stam to explain HB 1541, Homeowner Association Amendments. Senator Malcolm Graham moved the adoption of a committee substitute for purposes of discussion. The motion carried. Mr. Henry Jones, representing Homeowners Associations, spoke about concerns with Section 1 (late fees) and Section 8. Ms. Michelle Frazier, representing the NC Bar Association, spoke in favor of the bill. Senator Graham moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Senator Rand who moved to reconsider the vote by which HB 735, Accident & Health Insur./Rate Stabilization.-AB. received a favorable report. The motion carried. Senator Rand moved the adoption of a committee substitute for purposes of discussion. The motion carried. Senator David Hoyle moved to adopt an amendment. The motion carried. Senator Tom Apodaca moved an unfavorable report of the bill, but favorable as to the Senate Committee Substitute bill, as amended, and engrossed into a new committee substitute. The motion carried.

The meeting adjourned at 3:10 p.m.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, August 10, 2005

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

FAVORABLE

H.B. **665** Amend House Mover Laws.-AB
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **687** Pirating Movies.
Sequential Referral: None
Recommended Referral: None

H.B. **810** Amend Certain Land Surveyor Licensure Reqs.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1240** Vacation Rental Act Amendments.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1299** Motor Vehicle Repairs/Clarify Cost of Repair.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1464** Repeal Sunset on UNC Design Contracts/Report.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **576** Simply Bid Process/Small Comm. Coll. Projects.
Draft Number: PCS 70550
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **669** Oversize/Overweight Vehicle Changes.-AB

Draft Number:	PCS 30365
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1261** Wireless Telephone Service.

Draft Number:	PCS 60526
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 9

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, August 10, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **670** CDL/Federal Compliance

Draft Number:	PCS 50484
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **1174** ABC Permit Issuance and Compliance.

Draft Number:	PCS 60529
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **1284** Improve Real Estate Licensing Law.

Draft Number:	PCS 30366
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **1539** UNC/Amend Umstead Act.

Draft Number:	PCS 70552
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, August 11, 2005

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **735** Accident & Health Insur./Rate Stabilization.-AB

Draft Number:	PCS 60530
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **768** 2005 Omnibus Labor Law Changes.-AB

Draft Number:	PCS 10393
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1541** Homeowner Association Amendments.

Draft Number:	PCS 30369
Sequential Referral:	
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1539

Committee Substitute Favorable 5/25/05

Third Edition Engrossed 6/1/05

Short Title: UNC/Amend Umstead Act. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UMSTEAD ACT RELATING TO ACTIVITIES OF THE UNIVERSITY OF NORTH CAROLINA AND TO CREATE A PANEL TO DETERMINE WHETHER UNIVERSITY ACTIVITIES VIOLATE THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(b)(8) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

...

(8) The University of North Carolina with regard to:

a. The University's utilities and other services ~~now operated by it.~~operated by it prior to January 1, 2005.

b. The sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise ~~not exceeding twenty-five cents (25¢) in value~~ when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students.

c. The sale of meals or merchandise to persons attending meetings or conventions as invited guests.

d. The operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn.

e. The hospital and Medical School of the University of North Carolina.

f. The Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State.
g. The Centennial Campus of North Carolina State University at Raleigh.
h. The Horace Williams Campus of the University of North Carolina at Chapel Hill.
i. A Millennial Campus of a constituent institution of The University of North Carolina.
j. The comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.
k. Agreements by the North Carolina School of the Arts to the use of that school's facilities, equipment, and services of students, faculty, and staff for the creation of commercial materials and productions that may be unrelated to educational purposes, so long as the proceeds from those agreements are used for the benefit of the educational mission of the North Carolina School of the Arts.
l. Activities that further the mission of the University as stated in G.S. 116-1.
m. Activities that primarily serve students or employees of the University.
n. Activities that primarily provide University related services or market University related merchandise to alumni of the University.
o. Activities that enable the community in which the constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise.

..."

SECTION 2. G.S. 66-58 is amended by adding the following new subsections:

"(i) The Board of Governors of The University of North Carolina shall establish a panel to determine whether The University of North Carolina is authorized pursuant to sub-subdivisions m., n., and o., of subdivision (8) of subsection (b) of this section to undertake an activity in competition with an existing or proposed nongovernmental entity. Pursuant to G.S. 138-5, panel members shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions. The University of North Carolina shall be responsible for staffing and paying the expenses of the panel. The panel shall consist of nine members as follows:

(1) Two members who are familiar with the interests of the business community of the State appointed by the Governor.

(2) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121.

(3) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

(4) Three members who are not employees of The University of North Carolina appointed by the Board of Governors.

The panel may make the determination whether a proposed or ongoing activity undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this section is unauthorized competition. The panel may also make a determination whether a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8) of subsection (b) of this section is either unauthorized or unfair competition.

(i1) The Board of Governors shall establish and publish procedures to be used by the panel created under subsection (i) of this section in making determinations. The procedures shall:

(1) Include that a determination may be initiated based on a request from any nongovernmental entity in the State that is in or proposes to be in the same or a similar or competing business or based on a request from the constituent institution or other university system entity engaging in or proposing to engage in the activity.

(2) Require the panel to maintain a registry of all parties that request to receive notification of the panel's proceedings. The notification may be electronic and shall be given to all parties that have requested to be notified at least seven days prior to the panel's meeting. The notice shall include the name of the constituent institution or other university system entity engaging in or proposing to engage in the activity and the nature of the activity. The panel shall provide the documents relating to any agenda item to anyone requesting them in advance of the panel's proceedings.

(3) Provide that the agendas for the panel's meetings, the minutes of the meetings and the determinations of the panel shall be posted on The University of North Carolina Web site.

(i2) The University of North Carolina and its employees may rely on a determination made by the panel created under subsection (i) of this section as to whether an activity violates this section, and a determination that an activity is authorized shall be an absolute defense in any prosecution for any activity undertaken before a contrary determination is made by a court or by an opinion of the Attorney General. The panel shall not have the power to overrule a prior determination of the Attorney General.

(j) The proceeds of any activity undertaken under sub-subdivisions m., n., or o., of subdivision (8) of subsection (b) of this section shall be placed in an institutional trust

fund pursuant to G.S. 116-36.1 and shall be used to continue to conduct the activity that generated the proceeds or to further the mission of the constituent institution or other University entity engaging in the activity."

SECTION 3. G.S. 116-36.1(g) reads as rewritten:

"(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used,

when used, by the institution for support of forest-related research, teaching, and public service programs.

(10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o:"

SECTION 4. The panel established by Section 2 of this bill shall report to the Joint Legislative Economic Development Oversight Committee as proposed by House Bill 1365 of the 2005 Session of the General Assembly, if that bill is enacted. The panel shall report to the Committee by May 1, of each year on the number and types of determinations made during the preceding year.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1539

Committee Substitute Favorable 5/25/05

Third Edition Engrossed 6/1/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1539-CSSU-28 [v.2]

8/10/2005 2:01:34 PM

Short Title: UNC/Amend Umstead Act. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UMSTEAD ACT RELATING TO ACTIVITIES OF THE UNIVERSITY OF NORTH CAROLINA AND TO CREATE A PANEL TO DETERMINE WHETHER UNIVERSITY ACTIVITIES VIOLATE THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(b)(8) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

...

(8) The University of North Carolina with regard to:

a. The University's utilities and other services ~~now operated by it.~~operated by it prior to January 1, 2005.

b. The sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise ~~not exceeding twenty-five cents (25¢) in value~~ when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students.

c. The sale of meals or merchandise to persons attending meetings or conventions as invited guests.

d. The operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn.

e. The hospital and Medical School of the University of North Carolina.
f. The Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State.
g. The Centennial Campus of North Carolina State University at Raleigh.
h. The Horace Williams Campus of the University of North Carolina at Chapel Hill.
i. A Millennial Campus of a constituent institution of The University of North Carolina.
j. The comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.
k. Agreements by the North Carolina School of the Arts to the use of that school's facilities, equipment, and services of students, faculty, and staff for the creation of commercial materials and productions that may be unrelated to educational purposes, so long as the proceeds from those agreements are used for the benefit of the educational mission of the North Carolina School of the Arts.
l. Activities that further the mission of the University as stated in G.S. 116-1.
m. Activities that serve students or employees of the University or members of the immediate families or guests of students or employees
n. Activities that primarily provide University related services or market University related merchandise to alumni of the University and members of their immediate families.
o. Activities that enable the community in which the constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise. If the University proposes to engage in a new type of activity under this subdivision, then the University shall provide electronic notice of the proposal to the person who have requested to be included in the registry created pursuant to subsection (j)(2) of this section prior to engaging in the new type of activity.

..."

SECTION 2. G.S. 66-58 is amended by adding the following new subsections to read:

"(i) The Board of Governors of The University of North Carolina shall establish a panel to determine whether The University of North Carolina is authorized pursuant to sub-subdivisions m., n., and o., of subdivision (8) of subsection (b) of this section to

undertake an activity in competition with an existing or proposed nongovernmental entity. Pursuant to G.S. 138-5, panel members shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions. The University of North Carolina shall be responsible for staffing and paying the expenses of the panel. The panel shall consist of nine members as follows:

(1) Two members who are familiar with the interests of the business community of the State appointed by the Governor.

(2) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121.

(3) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

(4) Three members who are not employees of The University of North Carolina appointed by the Board of Governors.

The panel may make the determination whether a proposed or ongoing activity undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this section is unauthorized competition. The panel may also make a determination whether a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8) of subsection (b) of this section is either unauthorized or unfair competition. The University will be bound by a decision of the panel that a proposed or ongoing activity is not justified by the exceptions set out in sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of the section.

(j) The Board of Governors shall establish and publish procedures to be used by the panel created under subsection (i) of this section in making determinations. The procedures shall:

(1) Include that a determination may be initiated based on a request from any nongovernmental entity in the State that is in or proposes to be in the same or a similar or competing business or based on a request from the constituent institution or other university system entity engaging in or proposing to engage in the activity.

(2) Require the panel to maintain a registry of all parties that request to receive notification of the panel's proceedings. The notification may be electronic and shall be given to all parties that have requested to be notified at least seven days prior to the panel's meeting. The notice shall include the name of the constituent institution or other university system entity engaging in or proposing to engage in the activity and the nature of the activity. The panel shall provide the documents relating to any agenda item to anyone requesting them in advance of the panel's proceedings.

(3) Provide that the agendas for the panel's meetings, the minutes of the meetings and the determinations of the panel shall be posted on The University of North Carolina Web site.

(k) The University of North Carolina and its employees may rely on a determination made by the panel created under subsection (i) of this section as to whether an activity violates this section, and a determination that an activity is authorized shall be an absolute defense in any prosecution for any activity undertaken before a contrary determination is made by a court or by an opinion of the Attorney General. The panel shall not have the power to overrule a prior determination of the Attorney General.

(l) The proceeds of any activity undertaken under sub-subdivisions m., n., or o., of subdivision (8) of subsection (b) of this section shall be placed in an institutional trust fund pursuant to G.S. 116-36.1 and shall be used to continue to conduct the activity that generated the proceeds or to further the mission of the constituent institution or other University entity engaging in the activity."

SECTION 3. G.S. 116-36.1(g) reads as rewritten:

"(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the

institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs.

(10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o."

SECTION 4. The panel established by Section 2 of this bill shall report to the Joint Legislative Economic Development Oversight Committee. The panel shall report to the Committee by May 1, of each year on the number and types of determinations made during the preceding year.

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

Vote Yes for House Bill 1539, UNC/Amend Umstead Act

From: **Appalachian State University**
East Carolina University
Elizabeth City State University
Fayetteville State University
North Carolina Agricultural and Technical State University
North Carolina Central University
North Carolina School of the Arts
North Carolina State University
University of North Carolina at Asheville
University of North Carolina at Chapel Hill
University of North Carolina at Charlotte
University of North Carolina at Greensboro
University of North Carolina at Pembroke
University of North Carolina at Wilmington
Western Carolina University
Winston-Salem State University

Re: Support for House Bill 1539, UNC/Amend Umstead Act

All 16 university campuses that make up your North Carolina Public University System respectfully ask that you support House Bill 1539 which will be considered this week.

The bill amends the Umstead Act to allow campuses to make their equipment, expertise, and facilities available to the communities where the campuses serve to enhance economic development. Local communities and businesses are asking for this legislation. This legislation does have safeguards to protect local businesses. The bill limits these activities to those that are not "unfair competition," as determined by a panel made up of business people appointed by the House, Senate, Governor and Board of Governors. No University employees could serve on the panel. Any business could make a complaint to the panel and the University would be bound by its determination.

Enactment of this bill would increase the utilization of the University's unique capabilities, promoting economic development across all regions of North Carolina.

Please support House Bill 1539 – UNC/Amend Umstead Act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1539

Committee Substitute Favorable 5/25/05

Third Edition Engrossed 6/1/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1539-PCS70552-SU-28

Short Title: UNC/Amend Umstead Act. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UMSTEAD ACT RELATING TO ACTIVITIES OF THE UNIVERSITY OF NORTH CAROLINA AND TO CREATE A PANEL TO DETERMINE WHETHER UNIVERSITY ACTIVITIES VIOLATE THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(b)(8) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

...

(8) The University of North Carolina with regard to:

a. The University's utilities and other services ~~now operated by it.~~operated by it prior to January 1, 2005.

b. The sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise ~~not exceeding twenty-five cents (25¢) in value~~ when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students.

c. The sale of meals or merchandise to persons attending meetings or conventions as invited guests.

d. The operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn.

e. The hospital and Medical School of the University of North Carolina.
f. The Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State.
g. The Centennial Campus of North Carolina State University at Raleigh.
h. The Horace Williams Campus of the University of North Carolina at Chapel Hill.
i. A Millennial Campus of a constituent institution of The University of North Carolina.
j. The comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.
k. Agreements by the North Carolina School of the Arts to the use of that school's facilities, equipment, and services of students, faculty, and staff for the creation of commercial materials and productions that may be unrelated to educational purposes, so long as the proceeds from those agreements are used for the benefit of the educational mission of the North Carolina School of the Arts.
l. Activities that further the mission of the University as stated in G.S. 116-1.
m. Activities that serve students or employees of the University or members of the immediate families or guests of students or employees.
n. Activities that primarily provide University-related services or market University-related merchandise to alumni of the University and members of their immediate families.
o. Activities that enable the community in which the constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise. If the University proposes to engage in a new type of activity under this subdivision, then the University shall provide electronic notice of the proposal to the persons who have requested to be included in the registry created pursuant to subdivision (j)(2) of this section prior to engaging in the new type of activity.

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SECTION 2. G.S. 66-58 is amended by adding the following new subsections to read:

"(i) The Board of Governors of The University of North Carolina shall establish a panel to determine whether The University of North Carolina is authorized pursuant to sub-subdivisions m., n., and o. of subdivision (8) of subsection (b) of this section to

undertake an activity in competition with an existing or proposed nongovernmental entity. Pursuant to G.S. 138-5, panel members shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions. The University of North Carolina shall be responsible for staffing and paying the expenses of the panel. The panel shall consist of nine members as follows:

(1) Two members who are familiar with the interests of the business community of the State appointed by the Governor.

(2) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121.

(3) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

(4) Three members who are not employees of The University of North Carolina appointed by the Board of Governors.

The panel may make the determination whether a proposed or ongoing activity undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this section is unauthorized competition. The panel may also make a determination whether a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8) of subsection (b) of this section is either unauthorized or unfair competition. The University will be bound by a decision of the panel that a proposed or ongoing activity is not justified by the exceptions set out in sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of this section.

(j) The Board of Governors shall establish and publish procedures to be used by the panel created under subsection (i) of this section in making determinations. The procedures shall:

(1) Include that a determination may be initiated based on a request from any nongovernmental entity in the State that is in or proposes to be in the same or a similar or competing business or based on a request from the constituent institution or other university system entity engaging in or proposing to engage in the activity.

(2) Require the panel to maintain a registry of all parties that request to receive notification of the panel's proceedings. The notification may be electronic and shall be given to all parties that have requested to be notified at least seven days prior to the panel's meeting. The notice shall include the name of the constituent institution or other university system entity engaging in or proposing to engage in the activity and the nature of the activity. The panel shall provide the documents relating to any agenda item to anyone requesting them in advance of the panel's proceedings.

(3) Provide that the agendas for the panel's meetings, the minutes of the meetings, and the determinations of the panel shall be posted on The University of North Carolina Web site.

(k) The University of North Carolina and its employees may rely on a determination made by the panel created under subsection (i) of this section as to whether an activity violates this section, and a determination that an activity is authorized shall be an absolute defense in any prosecution for any activity undertaken before a contrary determination is made by a court or by an opinion of the Attorney General. The panel shall not have the power to overrule a prior determination of the Attorney General.

(l) The proceeds of any activity undertaken under sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of this section shall be placed in an institutional trust fund pursuant to G.S. 116-36.1 and shall be used to continue to conduct the activity that generated the proceeds or to further the mission of the constituent institution or other University entity engaging in the activity."

SECTION 3. G.S. 116-36.1(g) reads as rewritten:

"(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the

institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service ~~programs.~~programs;

(10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o."

SECTION 4. The panel established by Section 2 of this act shall report to the Joint Legislative Economic Development Oversight Committee. The panel shall report to the Committee by May 1 of each year on the number and types of determinations made during the preceding year.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1299

Committee Substitute Favorable 5/9/05
Third Edition Engrossed 5/16/05

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 include any taxes, any other repair shop supplies or overhead, and 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 2

HOUSE BILL 670*
Committee Substitute Favorable 5/5/05

Short Title: CDL/Federal Compliance.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS LICENSES IN ORDER TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.
5. For purposes of disqualification of a commercial drivers license only, any prayer for judgment continued if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.

3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
5. A final conviction of a criminal offense, including a no contest plea."

SECTION 2. G.S. 20-4.01(12b) reads as rewritten:

"(12b) Gross Vehicle Weight Rating (GVWR). – The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used."

SECTION 3. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial or other motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported."

SECTION 4. G.S. 20-7(a) reads as rewritten:

"(a) License Required. – To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular

drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. – A Class A license authorizes the holder to drive any of the following:
   a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
   b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. – A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. – A Class C license authorizes the holder to drive any of the following:
   a. A Class C motor vehicle that is not a commercial motor vehicle.
   b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A person holding a commercial drivers license issued by another jurisdiction must apply for a transfer and obtain a North Carolina issued commercial drivers license within 30 days of becoming a resident. Any other ~~A~~ new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 60 days after becoming a resident."

SECTION 5. G.S. 20-15 reads as rewritten:

"**§ 20-15. Authority of Division to cancel ~~license.~~license or endorsement.**

(a) The Division shall have authority to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division.

(c) Any person whose license is canceled under this section for failure to give the required or correct information, or for committing fraud, in an application for a

commercial drivers license shall be prohibited from reapplying for a commercial drivers license for a period of 60 days from the date of cancellation.

(d) The Division shall have authority to revoke an H endorsement of a commercial drivers license holder if the person with the endorsement is determined by the federal Transportation Security Administration to constitute a security threat, as specified in 49 C.F.R. § 1572.5(d)(4). "

SECTION 6. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. – Any of the following disqualifies a person from driving a commercial motor vehicle for one year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

(1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle.

(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

(3) A first conviction of G.S. 20-166, hit and run. ~~run, involving a commercial motor vehicle driven by the person.~~

(4) A first conviction of a felony in the commission of which a commercial motor vehicle was used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license.

(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2. ~~G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.~~

(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was operating a commercial motor vehicle.

(8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle.

(9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle.

(a1) Ten-Day Disqualification. – A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. – A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as

the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. – A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. – A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. – A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a "serious violation" includes violations of G.S. 20-140(f) and G.S. 20-141(j3).

(e) Three Years. – A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. – A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is ~~revoked.~~revoked, suspended, or cancelled.

(g) Violation of Out-of-Service Order. – Any person convicted for violating an out-of-service order, except as described in subsection (h) of this section, shall be disqualified as follows:

(1) A person is disqualified from driving a commercial vehicle for a period of 90 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of one year if convicted of a second violation of an out-of-service order during any 10-year period, arising from separate incidents.

(3) A person is disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and Passenger Offenses. – Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or

used to transport more than 15 passengers, including the driver, shall be disqualified as follows:

(1) A person is disqualified for a period of 180 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(i) Disqualification for Out-of-State Violations. – The Division shall withdraw the privilege to operate a commercial vehicle of any resident of this State or person transferring to this State upon receiving notice of the person's conviction or Administrative Per Se Notice in another state for an offense that, if committed in this State, would be grounds for ~~disqualification.~~ disqualification, even if the offense occurred in another jurisdiction prior to being licensed in this State where no action had been taken at that time in the other jurisdiction. The period of disqualification shall be the same as if the offense occurred in this State.

(j) Disqualification of Persons Without Commercial Drivers Licenses. – Any person convicted of an offense that requires disqualification under this section, but who does not hold a commercial drivers license, shall be disqualified from operating a commercial vehicle in the same manner as if the person held a valid commercial drivers license.

(k) Disqualification for Railroad Grade Crossing Offenses. – Any person convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.

(2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.

(3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection.

(l) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard. – The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. § 383.52."

SECTION 7. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle,~~ Except for offenses occurring in a commercial motor vehicle, or a second failure to submit to a chemical test when

charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction."

SECTION 8. G.S. 20-37.13 reads as rewritten:

"**§ 20-37.13. Commercial drivers license qualification standards.**

(a) No person shall be issued a commercial drivers license unless he:

(1) Is a resident of this State;

(2) Is 21 years of age;

(3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle that comply with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts F, G and H; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

For the purpose of skills testing and determining commercial drivers license classification, only the manufacturer's GVWR shall be used.

The tests shall be prescribed and conducted by the Division. Provided, a person who is at least 18 years of age may be issued a commercial drivers license if he is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

(1) The test is the same as that administered by the Division; and

(2) The third party has entered into an agreement with the Division which complies with the requirements of 49 C.F.R. § 383.75. The Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(c) Prior to October 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial drivers license if:

(1) For an application submitted by April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years preceding April 1, 1992:

a. Had more than one drivers license, except during the 10-day period beginning on the date he is issued a drivers license, or unless, prior to December 31, 1989, he was required to have

more than one license by a State law enacted prior to June 1, 1986;

b. Had any drivers license or driving privilege suspended, revoked, or cancelled;

c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or

e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and

(2) The applicant certifies, and provides satisfactory evidence, that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and he either:

a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated for the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(d) A commercial drivers license or learner's permit shall not be issued to a person while he is subject to a disqualification from driving a commercial motor vehicle, or while his drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial drivers license be issued unless the person who has applied for the license first surrenders all other drivers licenses issued by the Division or by another state. If a person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

(e) A commercial driver learner's permit may be issued to an individual who holds a regular Class C drivers license and has passed the knowledge test for the class and type of commercial motor vehicle the individual will be driving. The permit is valid for a period not to exceed six months and may be renewed or reissued only once within a two-year period. The fee for a commercial driver learner's permit is the same as the fee set by G.S. 20-7 for a regular learner's permit. G.S. 20-7(m) governs the issuance of a restricted instruction permit for a prospective school bus driver."

SECTION 9. G.S. 20-37.16 reads as rewritten:

"**§ 20-37.16. Content of license; classifications and endorsements; fees.**

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL – A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL – A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL – A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. – The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials

To qualify for any of the above endorsements, an applicant shall pass a knowledge test. To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(c1) The test for an S endorsement shall be waived by the Division for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the requirements of this subsection. An applicant for a waiver under this subsection shall verify that, during the two-year period immediately prior to application for an S endorsement, the applicant met all of the following requirements:

(1) The applicant held a valid commercial drivers license with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving.

(2) The applicant did not have the applicant's drivers license or commercial drivers license suspended, revoked, or cancelled, or the applicant was not disqualified from operating a commercial motor vehicle.

(3) The applicant was not convicted of a State law offense that corresponds to the list of disqualifying offenses in 49 C.F.R. § 383.51(b) while operating a commercial motor vehicle or of any

offense in a noncommercial motor vehicle that would be a disqualifying offense under 49 C.F.R. § 383.51(b) if committed in a commercial motor vehicle.

(4) The applicant was not convicted of more than one of the serious traffic violations listed and defined in G.S. 20-4.01(41a) while operating any type of motor vehicle.

(5) The applicant was not convicted of a violation of State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.

(6) The applicant was not convicted of any motor vehicle traffic violation that resulted in an accident.

(7) The applicant was regularly employed as a school bus driver, operated a school bus representative of the group the applicant seeks to drive, and provides evidence of that employment.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.

b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.

c. Is not used in the operations of a for-hire motor carrier.

d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation.

(f) For the purposes of this section, the term "school bus" has the same meaning as in 49 C.F.R. § 383.5."

SECTION 10. G.S. 20-37.21 reads as rewritten:

"**§ 20-37.21. Penalties.**

(a) Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense. In addition, upon conviction, the person shall be subject to a civil penalty of not less than one thousand one hundred dollars ($1,100) for the first offense and not more than two thousand seven hundred fifty dollars ($2,750) for a second or subsequent offense.

(b) Any person who violates G.S. 20-37.18 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(c) Any employer who violates G.S. 20-37.19 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000). In addition, upon conviction, the employer shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) nor more than eleven thousand dollars ($11,000).

(d) An employer who knowingly allows, requires, permits, or otherwise authorizes an employee to violate any railroad grade requirements contained in G.S. 20-142.1 through G.S. 20-142.5 shall pay a civil penalty of not more than ten thousand dollars ($10,000)."

SECTION 11. G.S. 20-141(j3) reads as rewritten:

"(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed ~~in excess~~ of 15 miles per hour or more above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained."

SECTION 12. G.S. 20-142.1 reads as rewritten:

"**§ 20-142.1. Obedience to railroad signal.**

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within 50 feet, but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements apply when:

(1) A clearly visible electrical or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1500 feet of the highway crossing emits a signal audible from that distance, and the railroad train is an immediate hazard because of its speed or nearness to the crossing; or

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(c) When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic.

(d) Any person who violates any provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 13. G.S. 20-142.2 reads as rewritten:

"**§ 20-142.2. Vehicles stop at certain grade crossing.**

The Department of Transportation may designate particularly dangerous highway crossings of railroads and erect stop signs at those crossings. When a stop sign is erected at a highway crossing of a railroad, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such grade crossing and shall proceed only upon exercising due care. Any person who violates this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se. An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 14. G.S. 20-142.3 reads as rewritten:

"**§ 20-142.3. Certain vehicles must stop at railroad grade crossing.**

(a) Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any activity bus, any motor vehicle carrying passengers for compensation, any commercial motor vehicle listed in 49 C.F.R. § 392.10, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train and shall not proceed until the driver can do so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears and the driver shall not change gears while crossing the track or tracks.

(b) Except for school buses and activity buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.

(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.
(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when the gate or flashing signal does not indicate the approach of a train.
(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.
(5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority.

(c) A person violating the provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(d), (e) Repealed by Session Laws 2001-487, s. 50(g).

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 15. G.S. 20-142.4 reads as rewritten:

"**§ 20-142.4. Moving heavy equipment at railroad grade crossing.**

(a) No person shall operate or move any crawler-type tractor, crane, or roller or any equipment or structure having a normal operating speed of five or less miles per hour upon or across any tracks at a railroad crossing without first complying with this section.

(b) Notice of any intended crossing described in subsection (a) of this section shall be given to a superintendent of the railroad and a reasonable time be given to the railroad to provide protection at the crossing.

(c) Before making any crossing described in subsection (a) of this section, the person operating or moving the vehicle or equipment shall:
(1) Stop the vehicle or equipment not less than 15 feet nor more than 50 feet from the nearest rail of the railroad;
(2) While stopped, shall listen and look both directions along the track for any approaching train and for signals indicating the approach of a train; and
(3) Shall not proceed until the crossing can be made safely.

(d) No crossing described in subsection (a) of this section shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

(e) Subsection (c) of this section shall not apply at any railroad crossing where State or local authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "Exempt".

(f) Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(g) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 16. G.S. 20-142.5 reads as rewritten:

"**§ 20-142.5. Stop when traffic obstructed.**

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 17. This act becomes effective September 30, 2005, and applies to offenses committed on or after that date.

Session 2005

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

House Bill 670

CDL/Federal Compliance-AB

Bill Primary Sponsor(s):	Representative Cole	Proposed Committee Substitute H670-CSSU-25[v.1]
Relevant Federal Law:	*49 C.F.R. Parts 218, 219, 383, and 384.*	
☒ Required by or Necessary for Compliance with Federal Law		☐ Exceeds Federal Law
☒ Federal Funds Conditioned upon Passage of Law		☒ Implements Federal Law

SUMMARY OF BILL PROVISIONS ALLEGEDLY REQUIRED BY FEDERAL LEGISLATION

On November 18, 1999, Congress passed Public Law 106-159, the Motor Carrier Safety Improvement Act (MCSIA). The legislation included 15 new provisions aimed at improving the overall effectiveness of the Commercial Driver's License (CDL) program. The Act required the Federal Motor Carrier Safety Administration (FMCSA) to promulgate a rule to incorporate the MCSIA provisions into the CDL program and impose significant penalties for noncompliance. FMSCA's final rule implementing the provisions of MCSIA became effective on September 30, 2002.

Pursuant to Section 384.301(b) of the Federal Motor Carrier Safety Regulations (FMCSRs), states were allowed up to 3 years to implement all of the MCSIA provisions that affect drivers, motor carriers, and states. Therefore, by September 30, 2005, all states must pass and be able to implement and enforce the MCSIA provisions. If North Carolina is found to be in substantial noncompliance with the FMCSRs, it will be subject to the withholding of 5% of its Federal-aid highway funds.

Currently, North Carolina is in compliance with some, but not all, of these regulations. This bill addresses several areas in which North Carolina is not in compliance including:

1. 49 C.F.R. § 384.226- the prohibition on masking convictions for CDL holders

2. 49 C.F.R. § 384.225- the maintenance of accurate driver histories for all CDL holders

3. 49 C.F.R. § 384.201- the provision which requires testing for CDL applicants

4. 49 C.F.R. § 384.212- the domicile requirement

5. 49 C.F.R. § 384.210- the limitation on licensing

6. 49 C.F.R. §§ 384.215-384.217- disqualification provisions

7. 49 C.F.R. §§ 218-219- additional disqualification provisions

PRELIMINARY

8. 49 C.F.R. §383.71- the knowledge test requirement

9. 49 C.F.R. § 384.222- civil penalties for drivers who violate out of state service orders

10. 49 C.F.R. § 384.223- employer's violation of and civil penalty for a railroad grade crossing violation

COMPLIANCE CONSIDERATIONS

House Bill 670 would bring North Carolina partially into compliance with federal regulations.

Pursuant to 49 C.F.R. § 384.226, a state may not "mask, defer imposition of judgment, or allow, an individual to enter into a diversion program that would prevent a CDL driver's conviction . . . from appearing on the driver's record [.]" Under current state law, a "prayer for judgment continued" (PJC) is not a conviction, even though the driver must enter a plea of guilty. Thus, the PJC program hides critical information from employers and prospective employers.

Section 1 of House Bill 670 remedies this defect by amending the definition of "Conviction" in state law. It specifies that any PJC granted for an offense occurring in North Carolina is a conviction if (1) the offender holds a commercial driver's license or (2) the offense occurs in a commercial motor vehicle.

49 C.F.R. § 384.225 requires a state to maintain an accurate driver history for all CDL holders. Currently, North Carolina posts but takes no action on "nolo contendre" convictions received from out of state. Since the federal definition of conviction includes "nolo contendre" convictions, Section 1 of the bill changes North Carolina's definition to make it consistent with the federal definition.

Sections 2 and 8 of the bill amend the definition of "Gross Vehicle Weight Rating" (GVWR) in state law to comply with 49 C.F.R. § 384.201 (the provision which requires testing for CDL applicants). Under current state law, an applicant can receive a commercial driver's license after performing a skills test in a vehicle that did not meet minimum federal requirements. Sections 2 and 8 rectify this problem by using the manufacturer's GVWR for the purpose of classification of commercial drivers licenses and skills testing.

49 C.F.R. § 384.212 requires North Carolina to mandate that a CDL holder who moves to North Carolina from another state must apply for a transfer within 30 days after establishing a domicile in North Carolina. Section 4 of the bill changes G.S. 20-7(a) to comply with the federal provision.

In accordance with 49 C.F.R. § 384.210, section 5 of the bill changes North Carolina law to require a minimum cancellation period when a CDL holder provides fraudulent information. Under section 5, a person whose CDL is cancelled for committing fraud may not reapply for a CDL for a period of 60 days from the date of cancellation.

49 C.F.R. §§ 384.215-384.217 address disqualifications. Section 6 of the bill attempts to make North Carolina law consistent with federal law by changing the statute to include violations committed in any type of vehicle, not just CMVs.

49 C.F.R. §§ 218-219 address disqualification periods for second and third serious traffic violations. North Carolina law does not consider convictions that are ten years old for disqualification purposes. If these convictions are not considered, it creates the possibility that North Carolina will not comply with appropriate federal disqualification actions. Accordingly, section 7 of the bill modifies North Carolina law to allow consideration of offenses occurring in commercial motor vehicles, even if they are ten years old. There is also a technical change in Section 11 of the bill that brings North Carolina into compliance with these federal regulations.

49 C.F.R. §383.71 requires CDL applicants to pass a knowledge test. Section 9 of the bill clarifies that this is also the law in North Carolina.

49 C.F.R. § 384.222 requires civil penalties for drivers who violate out of state service orders. Section 10 of the bill amends North Carolina law so it also imposes a civil penalty.

49 C.F.R. § 384.223 mandates a civil penalty for employers who knowingly allow drivers to commit a railroad grade crossing violation. Sections 10, 12, 13, 14, 15, and 16 of the bill make these violations illegal in North Carolina and impose a civil penalty.

TECHNICAL OR MECHANICAL CONSIDERATIONS

North Carolina has until September 30, 2005, to comply with the federal regulations. This act would become effective on that date and would apply to offenses committed on or after that date.

REVIEW AND APPROVAL

Prepared By: _____ **Date:** _____
Brad Krehely
Staff Attorney

Approved By: _____ **Date:** _____
Terrence D. Sullivan
Director of Research

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 670*

Committee Substitute Favorable 5/5/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H670-CSSU-25 [v.1]

7/6/2005 9:31:55 AM

Short Title: CDL/Federal Compliance.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS LICENSES IN ORDER TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.
5. Any prayer for judgment continued if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.

3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
5. A final conviction of a criminal offense, including a no contest plea."

SECTION 2. G.S. 20-4.01(12b) reads as rewritten:

"(12b) Gross Vehicle Weight Rating (GVWR). – The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used."

SECTION 3. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial or other motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported."

SECTION 4. G.S. 20-7(a) reads as rewritten:

"(a) License Required. – To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular

drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. – A Class A license authorizes the holder to drive any of the following:
   a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
   b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. – A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. – A Class C license authorizes the holder to drive any of the following:
   a. A Class C motor vehicle that is not a commercial motor vehicle.
   b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A person holding a commercial drivers license issued by another jurisdiction must apply for a transfer and obtain a North Carolina issued commercial drivers license within 30 days of becoming a resident. Any other ~~A~~ new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 60 days after becoming a resident."

SECTION 5. G.S. 20-15 reads as rewritten:

"**§ 20-15. Authority of Division to cancel ~~license.~~license or endorsement.**

(a) The Division shall have authority to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division.

(c) Any person whose license is canceled under this section for failure to give the required or correct information, or for committing fraud, in an application for a

commercial drivers license shall be prohibited from reapplying for a commercial drivers license for a period of 60 days from the date of cancellation.

(d) The Division shall have authority to revoke an H endorsement of a commercial drivers license holder if the person with the endorsement is determined by the federal Transportation Security Administration to constitute a security threat, as specified in 49 C.F.R. § 1572.5(d)(4). "

SECTION 6. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. – Any of the following disqualifies a person from driving a commercial motor vehicle for one ~~year:~~year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

(1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle.

(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

(3) A first conviction of G.S. 20-166, hit and run. ~~run, involving a commercial motor vehicle driven by the person.~~

(4) A first conviction of a felony in the commission of which a commercial motor vehicle was ~~used.~~used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license.

(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2. ~~G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.~~

(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was operating a commercial motor vehicle.

(8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle.

(9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle.

(a1) Ten-Day Disqualification. – A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. – A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as

the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. – A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. – A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. – A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a "serious violation" includes violations of G.S. 20-140(f) and G.S. 20-141(j3).

(e) Three Years. – A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. – A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is ~~revoked.~~revoked, suspended, or cancelled.

(g) Violation of Out-of-Service Order. – Any person convicted for violating an out-of-service order, except as described in subsection (h) of this section, shall be disqualified as follows:

(1) A person is disqualified from driving a commercial vehicle for a period of 90 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of one year if convicted of a second violation of an out-of-service order during any 10-year period, arising from separate incidents.

(3) A person is disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and Passenger Offenses. – Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or

used to transport more than 15 passengers, including the driver, shall be disqualified as follows:

(1) A person is disqualified for a period of 180 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(i) Disqualification for Out-of-State Violations. – The Division shall withdraw the privilege to operate a commercial vehicle of any resident of this State or person transferring to this State upon receiving notice of the person's conviction or Administrative Per Se Notice in another state for an offense that, if committed in this State, would be grounds for ~~disqualification.~~ disqualification, even if the offense occurred in another jurisdiction prior to being licensed in this State where no action had been taken at that time in the other jurisdiction. The period of disqualification shall be the same as if the offense occurred in this State.

(j) Disqualification of Persons Without Commercial Drivers Licenses. – Any person convicted of an offense that requires disqualification under this section, but who does not hold a commercial drivers license, shall be disqualified from operating a commercial vehicle in the same manner as if the person held a valid commercial drivers license.

(k) Disqualification for Railroad Grade Crossing Offenses. – Any person convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.

(2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.

(3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection.

(l) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard. – The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. § 383.52."

SECTION 7. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.~~ Except for offenses occurring in a commercial motor vehicle, or a second failure to submit to a chemical test when

charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction."

SECTION 8. G.S. 20-37.13 reads as rewritten:

"§ 20-37.13. Commercial drivers license qualification standards.

(a) No person shall be issued a commercial drivers license unless he:

(1) Is a resident of this State;

(2) Is 21 years of age;

(3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle that comply with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts F, G and H; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

For the purpose of skills testing and determining commercial drivers license classification, only the manufacturer's GVWR shall be used.

The tests shall be prescribed and conducted by the Division. Provided, a person who is at least 18 years of age may be issued a commercial drivers license if he is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

(1) The test is the same as that administered by the Division; and

(2) The third party has entered into an agreement with the Division which complies with the requirements of 49 C.F.R. § 383.75. The Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(c) Prior to October 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial drivers license if:

(1) For an application submitted by April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years preceding April 1, 1992:

a. Had more than one drivers license, except during the 10-day period beginning on the date he is issued a drivers license, or unless, prior to December 31, 1989, he was required to have

more than one license by a State law enacted prior to June 1, 1986;

b. Had any drivers license or driving privilege suspended, revoked, or cancelled;

c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or

e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and

(2) The applicant certifies, and provides satisfactory evidence, that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and he either:

a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated for the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(d) A commercial drivers license or learner's permit shall not be issued to a person while he is subject to a disqualification from driving a commercial motor vehicle, or while his drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial drivers license be issued unless the person who has applied for the license first surrenders all other drivers licenses issued by the Division or by another state. If a person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

(e) A commercial driver learner's permit may be issued to an individual who holds a regular Class C drivers license and has passed the knowledge test for the class and type of commercial motor vehicle the individual will be driving. The permit is valid for a period not to exceed six months and may be renewed or reissued only once within a two-year period. The fee for a commercial driver learner's permit is the same as the fee set by G.S. 20-7 for a regular learner's permit. G.S. 20-7(m) governs the issuance of a restricted instruction permit for a prospective school bus driver."

SECTION 9. G.S. 20-37.16 reads as rewritten:

"**§ 20-37.16. Content of license; classifications and endorsements; fees.**

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL – A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL – A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL – A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. – The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials

To qualify for any of the above endorsements, an applicant shall pass a knowledge test. To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(c1) The test for an S endorsement shall be waived by the Division for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the requirements of this subsection. An applicant for a waiver under this subsection shall verify that, during the two-year period immediately prior to application for an S endorsement, the applicant met all of the following requirements:

(1) The applicant held a valid commercial drivers license with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving.

(2) The applicant did not have the applicant's drivers license or commercial drivers license suspended, revoked, or cancelled, or the applicant was not disqualified from operating a commercial motor vehicle.

(3) The applicant was not convicted of a State law offense that corresponds to the list of disqualifying offenses in 49 C.F.R. § 383.51(b) while operating a commercial motor vehicle or of any

offense in a noncommercial motor vehicle that would be a disqualifying offense under 49 C.F.R. § 383.51(b) if committed in a commercial motor vehicle.

(4) The applicant was not convicted of more than one of the serious traffic violations listed and defined in G.S. 20-4.01(41a) while operating any type of motor vehicle.

(5) The applicant was not convicted of a violation of State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.

(6) The applicant was not convicted of any motor vehicle traffic violation that resulted in an accident.

(7) The applicant was regularly employed as a school bus driver, operated a school bus representative of the group the applicant seeks to drive, and provides evidence of that employment.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.

b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.

c. Is not used in the operations of a for-hire motor carrier.

d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation.

(f) For the purposes of this section, the term "school bus" has the same meaning as in 49 C.F.R. § 383.5."

SECTION 10. G.S. 20-37.21 reads as rewritten:

"**§ 20-37.21. Penalties.**

(a) Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense. In addition, upon conviction, the person shall be subject to a civil penalty of not less than one thousand one hundred dollars ($1,100) for the first offense and not more than two thousand seven hundred fifty dollars ($2,750) for a second or subsequent offense.

(b) Any person who violates G.S. 20-37.18 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(c) Any employer who violates G.S. 20-37.19 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000). In addition, upon conviction, the employer shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) nor more than eleven thousand dollars ($11,000).

(d) An employer who knowingly allows, requires, permits, or otherwise authorizes an employee to violate any railroad grade requirements contained in G.S. 20-142.1 through G.S. 20-142.5 shall pay a civil penalty of not more than ten thousand dollars ($10,000)."

SECTION 11. G.S. 20-141(j3) reads as rewritten:

"(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed ~~in excess of~~ 15 miles per hour or more above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained."

SECTION 12. G.S. 20-142.1 reads as rewritten:

"**§ 20-142.1. Obedience to railroad signal.**

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within 50 feet, but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements apply when:

(1) A clearly visible electrical or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1500 feet of the highway crossing emits a signal audible from that distance, and the railroad train is an immediate hazard because of its speed or nearness to the crossing; or

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(c) When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic.

(d) Any person who violates any provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 13. G.S. 20-142.2 reads as rewritten:

"**§ 20-142.2. Vehicles stop at certain grade crossing.**

The Department of Transportation may designate particularly dangerous highway crossings of railroads and erect stop signs at those crossings. When a stop sign is erected at a highway crossing of a railroad, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such grade crossing and shall proceed only upon exercising due care. Any person who violates this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se. An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 14. G.S. 20-142.3 reads as rewritten:

"**§ 20-142.3. Certain vehicles must stop at railroad grade crossing.**

(a) Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any activity bus, any motor vehicle carrying passengers for compensation, any commercial motor vehicle listed in 49 C.F.R. § 392.10, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train and shall not proceed until the driver can do so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears and the driver shall not change gears while crossing the track or tracks.

(b) Except for school buses and activity buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.

(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.

(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when the gate or flashing signal does not indicate the approach of a train.

(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

(5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority.

(c) A person violating the provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(d), (e) Repealed by Session Laws 2001-487, s. 50(g).

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 15. G.S. 20-142.4 reads as rewritten:

"**§ 20-142.4. Moving heavy equipment at railroad grade crossing.**

(a) No person shall operate or move any crawler-type tractor, crane, or roller or any equipment or structure having a normal operating speed of five or less miles per hour upon or across any tracks at a railroad crossing without first complying with this section.

(b) Notice of any intended crossing described in subsection (a) of this section shall be given to a superintendent of the railroad and a reasonable time be given to the railroad to provide protection at the crossing.

(c) Before making any crossing described in subsection (a) of this section, the person operating or moving the vehicle or equipment shall:

(1) Stop the vehicle or equipment not less than 15 feet nor more than 50 feet from the nearest rail of the railroad;

(2) While stopped, shall listen and look both directions along the track for any approaching train and for signals indicating the approach of a train; and

(3) Shall not proceed until the crossing can be made safely.

(d) No crossing described in subsection (a) of this section shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

(e) Subsection (c) of this section shall not apply at any railroad crossing where State or local authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "Exempt".

(f) Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(g) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 16. G.S. 20-142.5 reads as rewritten:

"**§ 20-142.5. Stop when traffic obstructed.**

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 17. This act becomes effective September 30, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 670*

Committee Substitute Favorable 5/5/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H670-PCS50484-SU-25

Short Title: CDL/Federal Compliance.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS LICENSES IN ORDER TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.
5. Any prayer for judgment continued if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.

3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
5. A final conviction of a criminal offense, including a no contest plea."

SECTION 2. G.S. 20-4.01(12b) reads as rewritten:

"(12b) Gross Vehicle Weight Rating (GVWR). – The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used."

SECTION 3. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial or other motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported."

SECTION 4. G.S. 20-7(a) reads as rewritten:

"(a) License Required. – To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular

drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. – A Class A license authorizes the holder to drive any of the following:
   a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
   b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. – A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. – A Class C license authorizes the holder to drive any of the following:
   a. A Class C motor vehicle that is not a commercial motor vehicle.
   b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A person holding a commercial drivers license issued by another jurisdiction must apply for a transfer and obtain a North Carolina issued commercial drivers license within 30 days of becoming a resident. Any other ~~A~~ new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 60 days after becoming a resident."

SECTION 5. G.S. 20-15 reads as rewritten:

"**§ 20-15. Authority of Division to cancel ~~license.~~license or endorsement.**

(a) The Division shall have authority to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division.

(c) Any person whose license is canceled under this section for failure to give the required or correct information, or for committing fraud, in an application for a

commercial drivers license shall be prohibited from reapplying for a commercial drivers license for a period of 60 days from the date of cancellation.

(d) The Division shall have authority to revoke an H endorsement of a commercial drivers license holder if the person with the endorsement is determined by the federal Transportation Security Administration to constitute a security threat, as specified in 49 C.F.R. § 1572.5(d)(4). "

SECTION 6. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. – Any of the following disqualifies a person from driving a commercial motor vehicle for one ~~year:~~year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

(1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle.

(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

(3) A first conviction of G.S. 20-166, hit and run. ~~run, involving a commercial motor vehicle driven by the person.~~

(4) A first conviction of a felony in the commission of which a commercial motor vehicle was ~~used.~~used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license.

(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2. ~~G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.~~

(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was operating a commercial motor vehicle.

(8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle.

(9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle.

(a1) Ten-Day Disqualification. – A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. – A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as

the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. – A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. – A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. – A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a "serious violation" includes violations of G.S. 20-140(f) and G.S. 20-141(j3).

(e) Three Years. – A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. – A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is ~~revoked.~~revoked, suspended, or cancelled.

(g) Violation of Out-of-Service Order. – Any person convicted for violating an out-of-service order, except as described in subsection (h) of this section, shall be disqualified as follows:

(1) A person is disqualified from driving a commercial vehicle for a period of 90 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of one year if convicted of a second violation of an out-of-service order during any 10-year period, arising from separate incidents.

(3) A person is disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and Passenger Offenses. – Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or

used to transport more than 15 passengers, including the driver, shall be disqualified as follows:

(1) A person is disqualified for a period of 180 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(i) Disqualification for Out-of-State Violations. – The Division shall withdraw the privilege to operate a commercial vehicle of any resident of this State or person transferring to this State upon receiving notice of the person's conviction or Administrative Per Se Notice in another state for an offense that, if committed in this State, would be grounds for ~~disqualification.~~ disqualification, even if the offense occurred in another jurisdiction prior to being licensed in this State where no action had been taken at that time in the other jurisdiction. The period of disqualification shall be the same as if the offense occurred in this State.

(j) Disqualification of Persons Without Commercial Drivers Licenses. – Any person convicted of an offense that requires disqualification under this section, but who does not hold a commercial drivers license, shall be disqualified from operating a commercial vehicle in the same manner as if the person held a valid commercial drivers license.

(k) Disqualification for Railroad Grade Crossing Offenses. – Any person convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.

(2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.

(3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection.

(l) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard. – The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. § 383.52."

SECTION 7. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle,~~ Except for offenses occurring in a commercial motor vehicle, or a second failure to submit to a chemical test when

charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction."

SECTION 8. G.S. 20-37.13 reads as rewritten:

"**§ 20-37.13. Commercial drivers license qualification standards.**

(a) No person shall be issued a commercial drivers license unless he:

(1) Is a resident of this State;

(2) Is 21 years of age;

(3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle that comply with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts F, G and H; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

For the purpose of skills testing and determining commercial drivers license classification, only the manufacturer's GVWR shall be used.

The tests shall be prescribed and conducted by the Division. Provided, a person who is at least 18 years of age may be issued a commercial drivers license if he is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

(1) The test is the same as that administered by the Division; and

(2) The third party has entered into an agreement with the Division which complies with the requirements of 49 C.F.R. § 383.75. The Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(c) Prior to October 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial drivers license if:

(1) For an application submitted by April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years preceding April 1, 1992:

a. Had more than one drivers license, except during the 10-day period beginning on the date he is issued a drivers license, or unless, prior to December 31, 1989, he was required to have

more than one license by a State law enacted prior to June 1, 1986;

b. Had any drivers license or driving privilege suspended, revoked, or cancelled;

c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or

e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and

(2) The applicant certifies, and provides satisfactory evidence, that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and he either:

a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated for the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(d) A commercial drivers license or learner's permit shall not be issued to a person while he is subject to a disqualification from driving a commercial motor vehicle, or while his drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial drivers license be issued unless the person who has applied for the license first surrenders all other drivers licenses issued by the Division or by another state. If a person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

(e) A commercial driver learner's permit may be issued to an individual who holds a regular Class C drivers license and has passed the knowledge test for the class and type of commercial motor vehicle the individual will be driving. The permit is valid for a period not to exceed six months and may be renewed or reissued only once within a two-year period. The fee for a commercial driver learner's permit is the same as the fee set by G.S. 20-7 for a regular learner's permit. G.S. 20-7(m) governs the issuance of a restricted instruction permit for a prospective school bus driver."

SECTION 9. G.S. 20-37.16 reads as rewritten:

"**§ 20-37.16. Content of license; classifications and endorsements; fees.**

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL – A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL – A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL – A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. – The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials

To qualify for any of the above endorsements, an applicant shall pass a knowledge test. To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(c1) The test for an S endorsement shall be waived by the Division for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the requirements of this subsection. An applicant for a waiver under this subsection shall verify that, during the two-year period immediately prior to application for an S endorsement, the applicant met all of the following requirements:

(1) The applicant held a valid commercial drivers license with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving.

(2) The applicant did not have the applicant's drivers license or commercial drivers license suspended, revoked, or cancelled, or the applicant was not disqualified from operating a commercial motor vehicle.

(3) The applicant was not convicted of a State law offense that corresponds to the list of disqualifying offenses in 49 C.F.R. § 383.51(b) while operating a commercial motor vehicle or of any

offense in a noncommercial motor vehicle that would be a disqualifying offense under 49 C.F.R. § 383.51(b) if committed in a commercial motor vehicle.

(4) The applicant was not convicted of more than one of the serious traffic violations listed and defined in G.S. 20-4.01(41a) while operating any type of motor vehicle.

(5) The applicant was not convicted of a violation of State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.

(6) The applicant was not convicted of any motor vehicle traffic violation that resulted in an accident.

(7) The applicant was regularly employed as a school bus driver, operated a school bus representative of the group the applicant seeks to drive, and provides evidence of that employment.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.

b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.

c. Is not used in the operations of a for-hire motor carrier.

d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation.

(f) For the purposes of this section, the term "school bus" has the same meaning as in 49 C.F.R. § 383.5."

SECTION 10. G.S. 20-37.21 reads as rewritten:

"**§ 20-37.21. Penalties.**

(a) Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense. In addition, upon conviction, the person shall be subject to a civil penalty of not less than one thousand one hundred dollars ($1,100) for the first offense and not more than two thousand seven hundred fifty dollars ($2,750) for a second or subsequent offense.

(b) Any person who violates G.S. 20-37.18 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(c) Any employer who violates G.S. 20-37.19 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000). In addition, upon conviction, the employer shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) nor more than eleven thousand dollars ($11,000).

(d) An employer who knowingly allows, requires, permits, or otherwise authorizes an employee to violate any railroad grade requirements contained in G.S. 20-142.1 through G.S. 20-142.5 shall pay a civil penalty of not more than ten thousand dollars ($10,000)."

SECTION 11. G.S. 20-141(j3) reads as rewritten:

"(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed ~~in excess of~~ 15 miles per hour or more above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained."

SECTION 12. G.S. 20-142.1 reads as rewritten:

"**§ 20-142.1. Obedience to railroad signal.**

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within 50 feet, but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements apply when:

(1) A clearly visible electrical or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1500 feet of the highway crossing emits a signal audible from that distance, and the railroad train is an immediate hazard because of its speed or nearness to the crossing; or

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(c) When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic.

(d) Any person who violates any provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 13. G.S. 20-142.2 reads as rewritten:

"**§ 20-142.2. Vehicles stop at certain grade crossing.**

The Department of Transportation may designate particularly dangerous highway crossings of railroads and erect stop signs at those crossings. When a stop sign is erected at a highway crossing of a railroad, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such grade crossing and shall proceed only upon exercising due care. Any person who violates this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se. An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 14. G.S. 20-142.3 reads as rewritten:

"**§ 20-142.3. Certain vehicles must stop at railroad grade crossing.**

(a) Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any activity bus, any motor vehicle carrying passengers for compensation, any commercial motor vehicle listed in 49 C.F.R. § 392.10, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train and shall not proceed until the driver can do so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears and the driver shall not change gears while crossing the track or tracks.

(b) Except for school buses and activity buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.

(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.

(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when the gate or flashing signal does not indicate the approach of a train.

(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

(5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority.

(c) A person violating the provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(d), (e) Repealed by Session Laws 2001-487, s. 50(g).

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 15. G.S. 20-142.4 reads as rewritten:

"**§ 20-142.4. Moving heavy equipment at railroad grade crossing.**

(a) No person shall operate or move any crawler-type tractor, crane, or roller or any equipment or structure having a normal operating speed of five or less miles per hour upon or across any tracks at a railroad crossing without first complying with this section.

(b) Notice of any intended crossing described in subsection (a) of this section shall be given to a superintendent of the railroad and a reasonable time be given to the railroad to provide protection at the crossing.

(c) Before making any crossing described in subsection (a) of this section, the person operating or moving the vehicle or equipment shall:

(1) Stop the vehicle or equipment not less than 15 feet nor more than 50 feet from the nearest rail of the railroad;

(2) While stopped, shall listen and look both directions along the track for any approaching train and for signals indicating the approach of a train; and

(3) Shall not proceed until the crossing can be made safely.

(d) No crossing described in subsection (a) of this section shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

(e) Subsection (c) of this section shall not apply at any railroad crossing where State or local authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "Exempt".

(f) Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(g) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 16. G.S. 20-142.5 reads as rewritten:

"**§ 20-142.5. Stop when traffic obstructed.**

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 17. This act becomes effective September 30, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 665*

Short Title:	Amend House Mover Laws.-AB	(Public)
Sponsors:	Representative Cole.	
Referred to:	Transportation.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING HOUSEMOVERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-356 reads as rewritten:

"**§ 20-356. Definitions.**

"Person" as used in this Article shall mean an individual, corporation, partnership, association or any other business entity. The word "house" as used in this Article shall mean a dwelling, building, or other structure in excess of ~~14~~ 15 feet in width; provided that neither mobile homes, nor modular homes or portions thereof, are within this definition when being transported from the manufacturer or from a licensed retail dealer location to the first set-up site. The word "Department" as used in this Article shall mean the North Carolina Department of Transportation."

SECTION 2. G.S. 20-358 reads as rewritten:

"**§ 20-358. Qualifications to become licensed.**

The Department shall issue annual printed licenses to applicants meeting the following conditions:

(1) The applicant must be at least 18 years of age; present acceptable evidence of good character and show sufficient housemoving experience on the application form furnished by the Department. Proof of creditable housemoving experience must be furnished at the time of application for those applicants not previously licensed by the Department. Housemoving experience means extensive and responsible training gained by the applicant while engaged actively and directly on a full-time basis in the moving of houses and structures on public roads and highways with at least 24 months experience. Examples of the capacity in which a person may work in gaining experience include the following in building moving operations:

a. Moving superintendent,

b. Moving foreman, and

c. General mechanic and helper in the housemoving profession or trade.

(2) Repealed by Session Laws 1981, c. 818, s. 3.

(3) The applicant must furnish proof that all of the vehicles, excluding "beams and dollies" and "hauling units," to be used in the movement of buildings, structures, or other extraordinary objects wider than ~~14~~ 15 feet have met the requirements of G.S. 20-183.2 pertaining to the equipment inspection of motor vehicles; provided that the "beams and dollies" and "hauling units" are excluded from inspection under G.S. 20-183.2 and, further, are not required to be equipped with brakes.

(4) The applicant must exhibit his federal employer's identification number.

(5) The applicant must pay an annual license fee of one hundred dollars ($100.00)."

SECTION 3. G.S. 20-359 reads as rewritten:

"**§ 20-359. Effective period of license.**

A license issued hereunder shall be effective ~~for a period of one year~~ from date of issuance and expire on July 31 of each year and shall be renewable on an annual basis."

SECTION 4. G.S. 20-360 reads as rewritten:

"**§ 20-360. Requirements for permit.**

(a) Persons licensed as professional housemovers shall also be required to secure a permit from the Department for every move undertaken on the State Highway System of roads; that permit shall be issued by the Department after determining that the applicant is (i) properly licensed, (ii) furnished special surety bonds as required by the Department, and (iii) complying with such other regulations as required by the Department.

(b) It shall be the duty of the applicant to see that the "beams and dollies" and "hauling units" used shall be constructed with proper material in a suitable manner and utilized so as to provide for the safety of the general public and the structure being relocated. Any violation of this duty may result in suspension or revocation of his license by the Department.

(c) A license shall not be required for ~~individuals~~ an individual owner of a towing vehicle moving their own buildings from or to property owned individually by those persons; however, a permit will be required for all moves.

(d) Licensed housemovers shall furnish front and rear certified escort vehicles on all moves, one or both of which may be a marked police, sheriff or State Highway Patrol vehicle as determined by the issuing agent, or one or two ~~private~~ properly equipped certified escort vehicles ~~equipped with flashing amber lights~~ depending on the number of law-enforcement vehicles escorting the move; escort vehicles shall operate where possible at a distance of 300 feet from the structure being moved; that this interval will be closed in cities and other congested areas to protect other traffic from the swing of the load at corners and ~~turns and,~~ turns, and the ~~private~~ certified escort vehicles shall comply with all restrictions as provided on the permit secured for

movement of the structure. ~~burn their headlights and be equipped with red flags on each side at the front; in addition, the private escort vehicles shall be equipped with a sign across the front or rear bumper bearing the legend "Wide Load" or "Oversized Load Following" or "Oversized Load Ahead," whichever is appropriate, with black letters at least 10 inches high on a yellow background.~~"

SECTION 5. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 687

Corrected Copy 3/22/05
Committee Substitute Favorable 5/2/05
Fourth Edition Engrossed 7/18/05

Short Title: Pirating Movies. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL OPERATION OF AN AUDIOVISUAL RECORDING DEVICE.

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 58A.

"Audiovisual Recordings.

"**§ 14-440.1. Unlawful operation of an audiovisual recording device.**

(a) Definitions. – The following definitions apply to this section:

(1) "Audiovisual recording device" means a digital or analog photographic or video camera, or any other technology or device now known or later developed, capable of recording, copying, or transmitting a motion picture, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(2) "Motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

(b) Offense. – Any person who knowingly operates or attempts to operate an audiovisual recording device in a motion picture theater to transmit, record, or otherwise make a copy of a motion picture, or any part thereof, without the written consent of the motion picture theater owner shall be guilty of a violation of this section.

(c) Penalty. – A violation of this section is punishable as follows:

(1) Unless the conduct is covered under some other provision of law providing greater punishment, any person convicted of a violation of this section is guilty of:

a. A Class 1 misdemeanor, if the violation is a first offense under this section.

b. A Class I felony, if the violation is a second or subsequent offense under this section.

(2) If a person is convicted of any violation of this section, the court, in its judgment of conviction, shall order the forfeiture and destruction or other disposition of the following:

a. All unauthorized copies of motion pictures or other audiovisual works, or any parts thereof.

b. All implements, devices, and equipment used or intended to be used in connection with the offense.

(d) Immunity of Certain Persons. – The owner or lessee of a motion picture theater, or the authorized agent or employee of the owner or lessee, who detains any person shall not be held civilly liable for claims arising out of such detention, when the detention is upon the premises of the motion picture theater or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining the person, the owner, lessee, agent, or employee had, at the time of the detention, probable cause to believe that the person committed an offense under this section. If the person being detained by the owner, lessee, agent, or employee is a minor under the age of 18 years, the owner, lessee, agent, or 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. An owner, lessee, agent, or 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.

(e) Authorized Activities. – This section does not prevent any lawfully authorized investigative, protective, law enforcement, or intelligence gathering employee or agent of a local, State, or federal government from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities."

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 3

HOUSE BILL 768

Committee Substitute Favorable 5/9/05
Committee Substitute #2 Favorable 5/18/05

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.~~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 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.

(e) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1984, that:

(1) Are manufactured from gray iron casting material, as specified by the American Society for Testing and Materials, (ASTM) 48-60T/30;

(2) Are constructed before December 31, 1967, 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 Boiler and Pressure Vessel 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.

(f) The construction requirements established by the Department of Labor shall not apply to hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986."

SECTION 3. G.S. 95-69.11 reads as rewritten:

"**§ 95-69.11. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby charged, directed, and empowered:

(1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.

(2) ~~To supervise the office of the Director of Boiler and Pressure Vessel Division.~~To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.

(3) To enforce rules adopted under authority of this Article.

(4) To inspect boilers and pressure vessels covered under this Article.

(5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

(6) To enjoin violations of this Article in the civil and criminal courts of this State.

(7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.

(8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.

(9) To have free access, without notice, to any location in this State, 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 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.

(b) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article other than in accordance with this Article and the rules adopted pursuant to this Article.

(c) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vessel."

SECTION 11. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-69.19. Violations; civil penalties; appeals.**

(a) Any person who violates G.S. 95-69-18(a) or (b) (Operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day each boiler or pressure vessel is so operated or used.

(b) Any person who violates G.S. 95-69-18(c) (Operation after refusal to issue or after revocation of inspection certificate) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any such boiler or pressure vessel is so operated or used.

(c) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.

(d) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) The Commissioner may file in the office of the clerk of the superior court of the county where the violation occurred or where the person against whom a civil penalty has been ordered resides, or if a corporation is involved in the county where the corporation maintains its principal place of business, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Upon filing of the final order, the clerk of superior court shall enter judgment in accordance with the order and notify the parties. The judgment shall have the same force and effect as a judgment by the superior court of the General Court of Justice."

SECTION 12. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-69.20. Violations; criminal penalties.**

(a) Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

(b) Any person knowingly making a material and false statement, representation, or certification in any application, record, report, plan, or any other document filed or

required to be maintained pursuant to this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor."

SECTION 13. G.S. 95-107 reads as rewritten:

"**§ 95-107. Assessment and collection of fees; certificates of safe operation.**

The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected."

SECTION 14. G.S. 95-108 reads as rewritten:

"**§ 95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes."

SECTION 15. G.S. 95-25.5(i) reads as rewritten:

"(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent, guardian, or other person standing in loco parentis are exempt from all provisions of this section, except for all of the following:

(1) The certificate requirements of subsection (a) of this section.

(2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.

(3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises."

SECTION 16. G.S. 95-25.8 reads as rewritten:

"**§ 95-25.8. Withholding of wages.**

~~An employer may withhold or divert any portion of an employee's wages when:~~

~~(1) The employer is required or empowered to do so by State or federal law, or~~

~~(2) The employer has a written authorization from the employee which is signed on or before the payday for the pay period from which the deduction is to be made indicating the reason for the deduction. Two types of authorization are permitted:~~

~~a. When the amount or rate of the proposed deduction is known and agreed upon in advance, the authorization shall specify the dollar amount or percentage of wages which shall be deducted from one or more paychecks, provided that if the deduction is for the convenience of the employee, the employee shall be 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 a portion of an employee's wages when:

(1) The employer is required or empowered by State or federal law; or

(2) The employer has a written authorization from the employee which is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made indicating the reason for the deduction, and the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. The employee shall have the right to withhold such authorization. Provided, such authorization cannot be granted prior to the occurrence of the event for which the deduction is to be made. If the withholding or diversion of wages owed is made for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization before the deduction is made.

(b) In addition to complying with the requirements in subsection (a) of this section, an employer may withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property only after giving the employee written notice of the amount to be deducted seven days prior to the payday on which the deduction is to be made, except that when a separation occurs the seven-day notice is not required. Any withholdings or diversions of an employee's wages pursuant to this subsection are considered to be for the employer's benefit and thus are subject to the limitations provided in subsection (c) of this section.

(c) In addition to the requirements of subsections (a) and (b) of this section, the withholding or diversion of wages owed for the employer's benefit must comply with the following requirements:

(1) In nonovertime 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 nonovertime hours.

(3) No reductions may be made during overtime work hours.

(d) Withholding or diversion of wages owed, for the convenience of employees, must be made pursuant to this section but 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 pay plans for employees. However, if an employer provides ~~vacation~~ these promised benefits for employees, the employer shall give all vacation 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. 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. 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 such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment.~~establishment, and then shall investigate that specific complaint only.~~"

SECTION 23. G.S. 95-25.17 reads as rewritten:

"**§ 95-25.17. Wage and Hour Division established.**

~~The State Employment Standards Division within the North Carolina Department of Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the Director of the State Employment Standards Division as the Director of the Wage and Hour Division and shall reappoint such other employees as he deems necessary to assist him in administering the provisions of this Article.~~ The Commissioner of Labor is

charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article."

SECTION 24. This act becomes effective October 1, 2005.

NCDOL
N.C. Department of Labor

HOUSE BILL 768:2005 OMNIBUS LABOR LAW CHANGES - PROPOSED PCS - EDITION 4

Committee: Senate Commerce

Introduced By: Rep. Howard

Date: August 10, 2005

Summary By: John Hoomani, NCDOL General Counsel

Version: Proposed PCS – Edition 4

SUMMARY: ***The Proposed PCS ("Edition 4") to House Bill 768 makes certain technical and other changes to the Uniform Boiler and Pressure Vessel Act of North Carolina (Chapter 95, Article 7A) and the Wage and Hour Act of North Carolina (Chapter 95, Article 2A) in order to streamline the Acts, eliminate any unnecessary requirements, and to add additional enforcement authority for the Commissioner of Labor. The only changes made in Edition 4 that differ from Edition 3, which was passed by the House on 5/23/2005, are to Section 16, which concerns the withholding of wages. However, a listing of all of the major changes are outlined below:***

CURRENT LAW: The Uniform Boiler and Pressure Vessel Act of North Carolina ("Boiler Safety Act") is designed to establish minimum safety standards for boilers and pressure vessels in the State in order to ensure that such devices are manufactured, operated and maintained in a safe manner. The Wage and Hour Act of North Carolina ("Wage and Hour Act") covers such things as minimum wages, overtime, wage payment, vacation, holiday and sick pay, and youth employment.

BILL ANALYSIS:

Boiler Safety Act (Sections 1 through 12):

The Proposed PCS ("Edition 4") to House Bill 768 makes a number of technical changes to the Boiler Safety Act. Many of these changes are very simple, such as amending and adding several definitions. These changes are outlined in Sections 1 through 12 of Edition 4, and are exactly the same as those contained in Edition 3 which passed the House on 5/23/2005. A listing of the major changes are outlined below:

- **Section 2:** The point of this Section is Deregulation. The Section clarifies certain exemptions outlined in the Boiler Safety Act, and adds some further exemptions from the Boiler Safety Act for certain equipment when the inspection of such devices does nothing to increase the safety of such devices, or such inspections would pose a high safety risk to our inspectors and the devices themselves pose a low safety risk to the users.
- **Section 3:** Adds some additional powers and duties to the Commissioner, including the ability to issue civil penalties for violations of the Boiler Safety Act, and the ability to require that before an existing device is brought into the State, or is moved from one location to another within the State, that the owner of such device notify the Commissioner of the intent to do so. This is similar to the "location notice" requirement currently contained in the Amusement Device Safety Act (Chapter 95, Article 14B) enforced by the Commissioner, and is needed to ensure that these devices are safe to operate in North Carolina.
- **Section 7:** Clarifies some of the classifications of authorized inspectors under the Boiler Safety Act, including adding a provision to exclude employees of

private contract inspection agencies from the definition of a "Special Inspector or Insurance Inspector." There are currently no such companies operating in the State, but they do operate in other States. This exclusion is necessary to ensure that only those inspectors who are familiar with the North Carolina statutes and rules regarding these devices are authorized to conduct certificate inspections, thus further ensuring that these devices are safe to operate in the State.

- **Section 9:** N.C. Gen. Stat. § 95-69.11 grants to the Commissioner the authority to enforce the Boiler Safety Act and the rules promulgated thereunder, and the ability to enjoin violations in the civil and criminal courts of this State. However, the Commissioner does not currently have the authority to immediately remove an unsafe device from operation. This Section grants to the Commissioner such authority, which mirrors the authority she is already granted in the Elevator Safety Act (N.C. Gen. Stat. § 95-110.6) and the Amusement Device Safety Act (N.C. Gen. Stat. § 95-111.6).
- **Section 10:** This Section restructures the current statute and models it after the Elevator Safety Act (N.C. Gen. Stat. § 95-110.7) and the Amusement Device Safety Act (N.C. Gen. Stat. § 95-111.7) in order to set forth specific violations of statutes which may then be cited under the civil penalty statute created by N.C. Gen. Stat. § 95-69.19 (which is contained in Section 11 of House Bill 768).
- **Sections 11:** Currently, the Boiler Safety Act authorizes the Commissioner to enforce the provisions of the Act and the rules promulgated thereunder, but does not give the Commissioner the ability to effectively ensure such compliance. In essence, the Act has no teeth. This Section adds teeth to the Act by giving the Commissioner the authority to assess civil penalties for violations of the Act or the rules, and is modeled after the statutes providing for such penalties under the Elevator Safety Act (N.C. Gen. Stat. § 95-110.10) and the Amusement Device Safety Act (N.C. Gen. Stat. § 95-111.13).

Wage and Hour Act (Sections 15 through 23):

The Proposed PCS ("Edition 4") to House Bill 768 makes a number of technical changes to the Wage and Hour Act – as outlined in Sections 15 through 22 of House Bill 768. The only changes made in Edition 4 that differ from Edition 3, which passed the House on 5/23/2005, are to Section 16, however a listing of all of the major changes are outlined below:

- **Section 16:** Changes the current requirements with regard to the withholding of wages to eliminate confusion caused by the current law. Changes are as follows:
  - The current law sets forth two types of written authorizations – specific authorizations (which set forth a specific dollar amount to be withheld) and blanket authorizations (where the dollar amount is not known). There has been confusion among employers and employees as to when and how a blanket authorization can be used. This Section eliminates this confusion by stating the specific requirements for both specific and blanket authorizations in a manner that is easier for both employers and employees to understand.
  - Also, these withholdings cannot take the employee below the minimum wage level or affect any overtime pay that the employee may be owed – which is in line with the requirements under the Fair Labor Standards Act ("FLSA").
  - In addition, the written authorization or written notice required under this section can be in the form of an electronic record so long as the requirements of the Uniform Electronic Transactions Act (Article 40, Chapter 66) are met.
  - Also, new subsection (d) codifies a rule that has existed for some time (13 NCAC 12 .0305), which clarifies how certain actions, such as the overpayment of wages or wage advances, are treated for purposes of deductions.

- **Sections 17 and 18:** These Sections repeal N.C. Gen. Stat. § 95-25.9 and N.C. Gen. Stat. § 95.25.10. Based upon the changes made in Section 16, above, these statutes are now unnecessary.
- **Section 21:** This Section would allow the Commissioner to investigate wage payment claims on behalf of all employees of a particular establishment without having to receive complaints from each employee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 768

Committee Substitute Favorable 5/9/05
Committee Substitute #2 Favorable 5/18/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H768-CSSU-27 [v.1]

8/10/2005 9:34:24 AM

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.~~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 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.

(e) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1984, that:

(1) Are manufactured from gray iron casting material, as specified by the American Society for Testing and Materials, (ASTM) 48-60T/30;

(2) Are constructed before December 31, 1967, 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 Boiler and Pressure Vessel 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.

(f) The construction requirements established by the Department of Labor shall not apply to hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986."

SECTION 3. G.S. 95-69.11 reads as rewritten:

"**§ 95-69.11. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby charged, directed, and empowered:

(1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.

(2) ~~To supervise the office of the Director of Boiler and Pressure Vessel Division.~~To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.

(3) To enforce rules adopted under authority of this Article.

(4) To inspect boilers and pressure vessels covered under this Article.

(5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

(6) To enjoin violations of this Article in the civil and criminal courts of this State.

(7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.

(8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.

(9) To have free access, without notice, to any location in this State, 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 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.

(b) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article other than in accordance with this Article and the rules adopted pursuant to this Article.

(c) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vessel."

SECTION 11. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-69.19. Violations; civil penalties; appeals.**

(a) Any person who violates G.S. 95-69-18(a) or (b) (Operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day each boiler or pressure vessel is so operated or used.

(b) Any person who violates G.S. 95-69-18(c) (Operation after refusal to issue or after revocation of inspection certificate) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any such boiler or pressure vessel is so operated or used.

(c) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.

(d) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) The Commissioner may file in the office of the clerk of the superior court of the county where the violation occurred or where the person against whom a civil penalty has been ordered resides, or if a corporation is involved in the county where the corporation maintains its principal place of business, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Upon filing of the final order, the clerk of superior court shall enter judgment in accordance with the order and notify the parties. The judgment shall have the same force and effect as a judgment by the superior court of the General Court of Justice."

SECTION 12. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-69.20. Violations; criminal penalties.

(a) Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

(b) Any person knowingly making a material and false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor."

SECTION 13. G.S. 95-107 reads as rewritten:

"**§ 95-107. Assessment and collection of fees; certificates of safe operation.**

The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected."

SECTION 14. G.S. 95-108 reads as rewritten:

"**§ 95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes."

SECTION 15. G.S. 95-25.5(i) reads as rewritten:

"(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent, guardian, or other person standing in loco parentis are exempt from all provisions of this section, except for all of the following:

(1) The certificate requirements of subsection (a) of this section.

(2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.

(3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises."

SECTION 16. G.S. 95-25.8 reads as rewritten:

"**§ 95-25.8. Withholding of wages.**

(a) An employer may withhold or divert any portion of an employee's wages when:

(1) The employer is required or empowered to do so by State or federal ~~law, or~~law;

(2) ~~The employer has a written authorization from the employee which is signed on or before the payday for the pay period from which the deduction is to be made indicating the reason for the deduction. Two types of authorization are permitted:~~

~~a.~~ When the amount or rate of the proposed deduction is known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. ~~authorization shall specify the dollar amount or percentage of wages which shall be deducted from one or more paychecks, provided~~ Provided, that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the ~~authorization;~~authorization; or

(3)~~b.~~ When the amount of the proposed deduction is not known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; and (ii) indicates the reason for the deduction. Prior to any deductions being made under this section, the employee must (i) receive advance written notice of the amount to be deducted; (ii) receive written notice of their right to withdraw the authorization; and (iii) be given a reasonable opportunity to withdraw the authorization in writing.~~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.~~

(b) The withholding or diversion of wages owed for the employer's benefit must comply with the following requirements:

(1) In nonovertime 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 nonovertime hours.

(3) No reductions may be made to overtime wages owed.

(c) In addition to complying with the requirements in subsections (a) and (b) of this section, an employer may withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property after giving the employee written notice of the amount to be deducted seven (7) days prior to the payday on which the deduction is to be made, except that when a separation occurs the seven (7) day notice is not required.

(d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to an employee as a result of a miscalculation or other bona fide error, advances of wages to an employee or to a third party at the employee's request, and the principal amount of loans made by an employer to an employee are considered pre-payment of wages and may be withheld or deducted from an employee's wages. Deductions for interest and

other charges related to loans by an employer to an employee shall require written authorization in accordance with subsection (a), above.

(e) Notwithstanding subsection (a) and (c), above, if criminal process has issued against an employee, an employee has been indicted, or an 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, an employer may withhold or divert a portion of the employee's wages in order to recoup the amount of the cash shortage, inventory shortage or damage to the employer's property, without the written authorization required by this section, but the amount of such withholdings shall comply with the provisions of subsection (b) of this section. If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.

(f) For purposes of this section, a written authorization or written notice may be in the form of an electronic record in compliance with Article 40 of Chapter 66 (the Uniform Electronic Transactions Act).

(g) 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 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 pay plans for employees. However, if an employer provides ~~vacation~~ these promised benefits for employees, the employer shall give all vacation 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. 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. 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 such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment.~~establishment, and then shall investigate that specific complaint only.~~"

SECTION 23. G.S. 95-25.17 reads as rewritten:

"**§ 95-25.17. Wage and Hour Division established.**

~~The State Employment Standards Division within the North Carolina Department of Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the Director of the State Employment Standards Division as the Director of the Wage and Hour Division and shall reappoint such other employees as he deems necessary to assist him in administering the provisions of this Article.~~ The Commissioner of Labor is charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article."

SECTION 24. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 768

Committee Substitute Favorable 5/9/05

Committee Substitute #2 Favorable 5/18/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H768-PCS10393-SU-27

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.~~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 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.

(e) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1984, that:

(1) Are manufactured from gray iron casting material, as specified by the American Society for Testing and Materials, (ASTM) 48-60T/30;

(2) Are constructed before December 31, 1967, 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 Boiler and Pressure Vessel 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.

(f) The construction requirements established by the Department of Labor shall not apply to hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986."

SECTION 3. G.S. 95-69.11 reads as rewritten:

"**§ 95-69.11. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby charged, directed, and empowered:

(1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.

(2) ~~To supervise the office of the Director of Boiler and Pressure Vessel Division.~~To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.

(3) To enforce rules adopted under authority of this Article.

(4) To inspect boilers and pressure vessels covered under this Article.

(5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

(6) To enjoin violations of this Article in the civil and criminal courts of this State.

(7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.

(8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.

(9) To have free access, without notice, to any location in this State, 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 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.

(b) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article other than in accordance with this Article and the rules adopted pursuant to this Article.

(c) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vessel."

SECTION 11. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-69.19. Violations; civil penalties; appeals.**

(a) Any person who violates G.S. 95-69-18(a) or (b) (operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day each boiler or pressure vessel is so operated or used.

(b) Any person who violates G.S. 95-69-18(c) (operation after refusal to issue or after revocation of inspection certificate) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any such boiler or pressure vessel is so operated or used.

(c) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.

(d) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) The Commissioner may file in the office of the clerk of the superior court of the county where the violation occurred or where the person against whom a civil penalty has been ordered resides, or if a corporation is involved in the county where the corporation maintains its principal place of business, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Upon filing of the final order, the clerk of superior court shall enter judgment in accordance with the order and notify the parties. The judgment shall have the same force and effect as a judgment by the superior court of the General Court of Justice."

SECTION 12. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-69.20. Violations; criminal penalties.

(a) Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

(b) Any person knowingly making a material and false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor."

SECTION 13. G.S. 95-107 reads as rewritten:

"**§ 95-107. Assessment and collection of fees; certificates of safe operation.**

The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected."

SECTION 14. G.S. 95-108 reads as rewritten:

"**§ 95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes."

SECTION 15. G.S. 95-25.5(i) reads as rewritten:

"(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent, guardian, or other person standing in loco parentis are exempt from all provisions of this section, except for all of the following:

(1) The certificate requirements of subsection (a) of this section.

(2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.

(3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises."

SECTION 16. G.S. 95-25.8 reads as rewritten:

"**§ 95-25.8. Withholding of wages.**

(a) An employer may withhold or divert any portion of an employee's wages when:

(1) The employer is required or empowered to do so by State or federal ~~law, or~~law;

(2) ~~The employer has a written authorization from the employee which is signed on or before the payday for the pay period from which the deduction is to be made indicating the reason for the deduction. Two types of authorization are permitted:~~

~~a.~~ When the amount or rate of the proposed deduction is known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. ~~authorization shall specify the dollar amount or percentage of wages which shall be deducted from one or more paychecks, provided~~ Provided, that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the ~~authorization;~~authorization; or

(3)~~b.~~ When the amount of the proposed deduction is not known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; and (ii) indicates the reason for the deduction. Prior to any deductions being made under this section, the employee must (i) receive advance written notice of the amount to be deducted; (ii) receive written notice of their right to withdraw the authorization; and (iii) be given a reasonable opportunity to withdraw the authorization in writing.~~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.~~

(b) The withholding or diversion of wages owed for the employer's benefit must comply with the following requirements:

(1) In nonovertime 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 nonovertime hours.

(3) No reductions may be made to overtime wages owed.

(c) In addition to complying with the requirements in subsections (a) and (b) of this section, an employer may withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property after giving the employee written notice of the amount to be deducted seven days prior to the payday on which the deduction is to be made, except that when a separation occurs the seven-day notice is not required.

(d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to an employee as a result of a miscalculation or other bona fide error, advances of wages to an employee or to a third party at the employee's request, and the principal amount of loans made by an employer to an employee are considered prepayment of wages and may be withheld or deducted from an employee's wages. Deductions for interest and

other charges related to loans by an employer to an employee shall require written authorization in accordance with subsection (a), above.

(e) Notwithstanding subsections (a) and (c), above, if criminal process has issued against an employee, an employee has been indicted, or an 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, an employer may withhold or divert a portion of the employee's wages in order to recoup the amount of the cash shortage, inventory shortage, or damage to the employer's property, without the written authorization required by this section, but the amount of such withholdings shall comply with the provisions of subsection (b) of this section. If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.

(f) For purposes of this section, a written authorization or written notice may be in the form of an electronic record in compliance with Article 40 of Chapter 66 (the Uniform Electronic Transactions Act).

(g) 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 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 pay plans for employees. However, if an employer provides ~~vacation~~ these promised benefits for employees, the employer shall give all vacation 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. 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. 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 such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment.~~establishment, and then shall investigate that specific complaint only.~~"

SECTION 23. G.S. 95-25.17 reads as rewritten:

"**§ 95-25.17. Wage and Hour Division established.**

~~The State Employment Standards Division within the North Carolina Department of Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the Director of the State Employment Standards Division as the Director of the Wage and Hour Division and shall reappoint such other employees as he deems necessary to assist him in administering the provisions of this Article.~~ The Commissioner of Labor is charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article."

SECTION 24. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 810

Short Title:	Amend Certain Land Surveyor Licensure Reqs.	(Public)
Sponsors:	Representatives Gillespie, Gibson (Primary Sponsors); and Vinson.	
Referred to:	Ways and Means.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN LICENSURE AND CERTIFICATION REQUIREMENTS UNDER THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89C-13(b) reads as rewritten:

"(b) Land Surveyor Applicant. – To be eligible for admission to examination for land surveyor intern or professional land surveyor, an applicant must be of good character and reputation and shall submit five references with the application for licensure as a land surveyor, two of which references shall be professional land surveyors having personal knowledge of the applicant's land surveying experience, or in the case of an application for certification as a land surveyor intern by three references, one of which shall be a licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which the applicant has been associated, and recommendations by references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board determines it necessary. Educational credit for institute courses, correspondence courses, or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for licensure as a professional land surveyor or for certification as a land surveyor intern respectively:

(1) As a professional land surveyor (shall meet one):

a. Rightful possession of a bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of two years or more of progressive practical experience, one year of which shall have

been under a practicing professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. ~~The applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the bachelor of science degree at the first regularly scheduled examination thereafter.~~ Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of four years of progressive practical experience, three years of which shall have been under a practicing licensed land ~~surveyor,~~surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, eight years of progressive practical experience, four years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any written and oral examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. ~~The~~ If the applicant has not successfully completed the first examination on or before January 1, 2013, the applicant may apply to the Board to take the first examination ~~(Surveying Fundamentals) immediately~~ after obtaining the associate degree and completing four years of practical experience, two years of which shall have been under a practicing professional land surveyor at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing the practical experience required under this subdivision, the applicant may apply to the Board to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully

completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

c. Repealed by Session Laws 1998-118, s. 11.

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing licensed land ~~surveyor,~~surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, 16 years of progressive practical experience, nine years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. ~~The~~ If the applicant has not successfully passed the first examination on or before January 1, 2013, the applicant may be qualified by the Board to take the first examination ~~(Surveying Fundamentals)~~ upon graduation from high school or the completion of a high school equivalency certificate and successfully completing ~~five~~ 10 years of progressive practice experience, ~~four~~ six of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. Licensure by Comity or Endorsement. – A person holding a certificate of licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, the applicant may be asked to take any examinations as the Board requires to determine the applicant's qualifications, but in any event, the applicant shall be required to pass an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the principles and practice of land surveying examination and

the fundamentals of land surveying examination. Upon satisfactorily passing the examinations, the applicant shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. – Any person presently licensed to practice professional engineering under this Chapter shall upon application be licensed to practice land surveying, providing a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. – Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1999. After July 1, 1999, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the ~~Board~~ Board, a record satisfactory to the Board of four years of progressive practical experience, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing a written and oral examination as required by the Board.

~~b. Rightful possession of a bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing any oral and written examinations required by the Board.~~

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ 10 years of progressive, practical experience, ~~four~~ six years of which shall have been under a practicing licensed land surveyor and satisfactorily passing any oral and written examinations required by the Board.

d. Graduation and examination. – A graduate of a surveying curriculum or other equivalent curriculum in surveying approved by the Board or a student who has attained senior status in an accredited surveying program of four years or more shall be admitted to the fundamentals of surveying examination. The applicant shall be notified if the examination was passed or not passed, and if passed the applicant shall be certified as a surveying intern if the applicant is otherwise qualified.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1464

Committee Substitute Favorable 5/16/05

Short Title: Repeal Sunset on UNC Design Contracts/Report. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE PERMANENT THE LAW PROVIDING FOR CONSTRUCTION AND DESIGN SUPERVISORY AUTHORITY FOR CERTAIN PROJECTS OF THE UNIVERSITY OF NORTH CAROLINA AND TO REQUIRE REPORTS ON ACTIONS TAKEN UNDER THAT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Section 14(a) of S.L. 2001-496 reads as rewritten:

"**SECTION 14.(a)** Sections 8(a) through 8(e) of this act become effective July 1, 2001. Section 11.1 of this act becomes effective March 1, 2002. The remaining sections of Parts I and II of this act become effective January 1, 2002, and apply to construction projects for which bids or proposals are solicited on or after that date. The remainder of this act is effective when it becomes law.~~Sections 8(a) through 8(e) of this act expire December 31, 2006.~~"

SECTION 2. G.S. 116-31.11 reads as rewritten:

"**§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of two million dollars ($2,000,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section.

(e) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded pursuant to this section.

(f) The Board of Governors shall annually report to the State Building Commission the following:

(1) A list of projects governed by this section.

(2) The estimated cost of each project along with the actual cost.

(3) The name of each person awarded a contract under this section.

(4) Whether the person or business awarded a contract under this section meets the definition of 'minority business' or 'minority person' as defined in G.S. 143-128.2(g)."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1174

Committee Substitute Favorable 4/27/05

Short Title: ABC Permit Issuance and Compliance. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ALCOHOLIC BEVERAGE CONTROL LAWS REGARDING THE ISSUANCE AND REVOCATION OF PERMITS AT LOCATIONS THAT ARE OR BECOME UNSUITABLE TO HOLD ABC PERMITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(12a) 'Premises' means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process."

SECTION 2. G.S. 18B-901(c) reads as rewritten:

"(c) Factors in Issuing Permit. – Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which ~~he~~ the applicant has applied. To be a suitable place, the local governing body shall return a Zoning and Compliance Form to the Commission on a form provided by the Commission to show the establishment ~~shall comply~~ is in compliance with all applicable building and fire ~~codes.~~codes and, if applicable, has been notified that it is located in an Urban Redevelopment Area as defined by Article 22 of Chapter 160A and as required by G.S. 18B-904(e)(2). Other factors the Commission shall consider in determining whether the applicant and the business location are suitable are:

(1) The reputation, character, and criminal record of the applicant;

(2) The number of places already holding ABC permits within the neighborhood;

(3) Parking facilities and traffic conditions in the neighborhood;

(4) Kinds of businesses already in the neighborhood;

(5) Whether the establishment is located within 50 feet of a church ~~or public school or church school;~~, public school, or any nonpublic

school as defined by Part 1 or Part 2 in Article 39 of Chapter 115C of the General Statutes;

(6) Zoning laws;

(7) The recommendations of the local governing ~~body; and~~body;

(8) Any other evidence that would tend to show whether the applicant would comply with the ABC ~~laws and whether operation of his business at that location would be detrimental to the neighborhood.~~laws; and

(9) Whether the operation of the applicant's business at that location would be detrimental to the neighborhood including evidence admissible under G.S. 150B-29(a) of the following:

a. Past revocations, suspensions, and violations of ABC laws by prior permittees at this location; or

b. Evidence of illegal drug activity on or about the licensed premises; or

c. Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises."

SECTION 3. G.S. 18B-901(d) reads as rewritten:

"(d) Commission's Authority. – The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit and the location to which the permit may be issued."

SECTION 4. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. –

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. ~~No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).~~

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this section, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment Area as required under G.S. ~~14-309(a)~~ 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore.

The order will remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action.

(3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and, without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or his employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, or controlled substance laws at a single ABC-licensed premises pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), or G.S. 18B-1005.1 within a 12-month period. The permittee and the owner of the property have the sole responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred."

SECTION 5. G.S. 18B-906(a) reads as rewritten:

"(a) Act Applies. – An ABC permit is a "license" within the meaning of G.S. 150B-2, ~~and~~ and, except for revocation pursuant to G.S. 18B-904(e)(3), a Commission action on issuance, suspension, or revocation of an ABC permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case" subject to the provisions of Chapter 150B except as provided in this section."

SECTION 6. 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 1174

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1174-PCS60529-SU-29

Short Title: ABC Permit Issuance and Compliance. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ALCOHOLIC BEVERAGE CONTROL LAWS REGARDING THE ISSUANCE AND REVOCATION OF PERMITS AT LOCATIONS THAT ARE OR BECOME UNSUITABLE TO HOLD ABC PERMITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(12a) 'Premises' means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process."

SECTION 2. G.S. 18B-901(c) reads as rewritten:

"(c) Factors in Issuing Permit. – Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which ~~he~~ the applicant has applied. To be a suitable place, the local governing body shall return a Zoning and Compliance Form to the Commission on a form provided by the Commission to show the establishment ~~shall comply~~ is in compliance with all applicable building and fire ~~codes.~~codes and, if applicable, has been notified that it is located in an Urban Redevelopment Area as defined by Article 22 of Chapter 160A of the General Statutes and as required by G.S. 18B-904(e)(2). Other factors the Commission shall consider in determining whether the applicant and the business location are suitable ~~are:~~are all of the following:

(1) The reputation, character, and criminal record of the ~~applicant;~~applicant.

(2) The number of places already holding ABC permits within the ~~neighborhood;~~neighborhood.

(3) Parking facilities and traffic conditions in the ~~neighborhood;~~neighborhood.
(4) Kinds of businesses already in the ~~neighborhood;~~neighborhood.
(5) Whether the establishment is located within 50 feet of a church ~~or public school or church school;~~, public school, or any nonpublic school as defined by Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.
(6) Zoning ~~laws;~~laws.
(7) The recommendations of the local governing ~~body; and~~body.
(8) Any other evidence that would tend to show whether the applicant would comply with the ABC ~~laws and whether operation of his business at that location would be detrimental to the neighborhood.~~laws.
(9) Whether the operation of the applicant's business at that location would be detrimental to the neighborhood, including evidence admissible under G.S. 150B-29(a) of any of the following:
a. Past revocations, suspensions, and violations of ABC laws by prior permittees related to or associated with the applicant, or a business with which the applicant is associated, within the immediate preceding 12-month period at this location.
b. Evidence of illegal drug activity on or about the licensed premises.
c. Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises."

SECTION 3. G.S. 18B-901(d) reads as rewritten:

"(d) Commission's Authority. – The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. The Commission shall also have the authority to determine the suitability of the location to which the permit may be issued."

SECTION 4. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. –
(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. ~~No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).~~
(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this section, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period

of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment Area as required under G.S. ~~14-309(a)~~ 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore. The order will remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action.

(3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or the permittee's employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations on separate dates of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws as those offenses are prohibited pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a 12-month period. The permittee and the owner of the property have the responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred."

SECTION 5. G.S. 18B-906(a) reads as rewritten:

"(a) Act Applies. – An ABC permit is a "license" within the meaning of G.S. 150B-2, ~~and~~ and, except for revocation pursuant to G.S. 18B-904(e)(3), a Commission action on issuance, suspension, or revocation of an ABC permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case" subject to the provisions of Chapter 150B except as provided in this section."

SECTION 6. 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 1174

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1174-CSRU-70 [v.6]

7/26/2005 7:13:35 PM

Short Title: ABC Permit Issuance and Compliance. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ALCOHOLIC BEVERAGE CONTROL LAWS REGARDING THE ISSUANCE AND REVOCATION OF PERMITS AT LOCATIONS THAT ARE OR BECOME UNSUITABLE TO HOLD ABC PERMITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(12a) 'Premises' means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process."

SECTION 2. G.S. 18B-901(c) reads as rewritten:

"(c) Factors in Issuing Permit. – Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which ~~he~~ the applicant has applied. To be a suitable place, the local governing body shall return a Zoning and Compliance Form to the Commission on a form provided by the Commission to show the establishment ~~shall comply~~ is in compliance with all applicable building and fire ~~codes.~~codes and, if applicable, has been notified that it is located in an Urban Redevelopment Area as defined by Article 22 of Chapter 160A and as required by G.S. 18B-904(e)(2). Other factors the Commission shall consider in determining whether the applicant and the business location are suitable ~~are:~~are all of the following:

(1) The reputation, character, and criminal record of the ~~applicant;~~applicant.

(2) The number of places already holding ABC permits within the ~~neighborhood;~~neighborhood.

(3) Parking facilities and traffic conditions in the ~~neighborhood;~~neighborhood.

(4) Kinds of businesses already in the ~~neighborhood;~~neighborhood.

(5) Whether the establishment is located within 50 feet of a church ~~or public school or church school;~~, public school, or any nonpublic school as defined by Part 1 or Part 2 in Article 39 of Chapter 115C of the General Statutes.

(6) Zoning ~~laws;~~laws.

(7) The recommendations of the local governing ~~body; and~~body.

(8) Any other evidence that would tend to show whether the applicant would comply with the ABC ~~laws and whether operation of his business at that location would be detrimental to the neighborhood.~~laws.

(9) Whether the operation of the applicant's business at that location would be detrimental to the neighborhood including evidence admissible under G.S. 150B-29(a) of any of the following:

a. Past revocations, suspensions, and violations of ABC laws by prior permittees related to or associated with the applicant, or a business with which the applicant is associated, within the immediate preceding 12-month period at this location.

b. Evidence of illegal drug activity on or about the licensed premises.

c. Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises."

SECTION 3. G.S. 18B-901(d) reads as rewritten:

"(d) Commission's Authority. – The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. The Commission shall also have the authority to determine the suitability of the location to which the permit may be issued."

SECTION 4. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. –

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. ~~No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).~~

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this section, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment

Area as required under G.S. ~~14-309(a)~~ 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore. The order will remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action.

(3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and, without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or the permittee's employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations on separate dates of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws as those offenses are prohibited pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a 12-month period. The permittee and the owner of the property have the responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred."

SECTION 5. G.S. 18B-906(a) reads as rewritten:

"(a) Act Applies. – An ABC permit is a "license" within the meaning of G.S. 150B-2, ~~and~~ and, except for revocation pursuant to G.S. 18B-904(e)(3), a Commission action on issuance, suspension, or revocation of an ABC permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case" subject to the provisions of Chapter 150B except as provided in this section."

SECTION 6. 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 2

HOUSE BILL 1240
Committee Substitute Favorable 5/25/05

Short Title: Vacation Rental Act Amendments. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VACATION RENTAL HOME ACT CONCERNING VACATION RENTAL AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42A-17(b) reads as rewritten:

"(b) Except as ~~otherwise~~ provided in ~~this subsection,~~ G.S. 42A-36, if, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant."

SECTION 2. G.S. 42A-19(a) reads as rewritten:

"(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take ~~his or her~~ title to the property subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor ~~such~~ those terms, but the tenant shall be entitled to a refund of payments made by him or her, as provided in subsection (b) of this section.

Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after ~~entering into the contract of sale~~ transfer of the property, the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. In lieu of providing the grantee a copy of each vacation rental agreement, where the landlord or the landlord's agent utilizes a standard form vacation rental agreement, the landlord may provide the grantee with a copy of the part of each vacation rental agreement that contains information unique to the tenancy, the amount to be paid by the tenant, and the parties' signatures,

along with one copy of the rest of the standard form vacation rental agreement. However, the landlord shall not be required to provide the grantee with copies of the vacation rental agreements if in anticipation of acquiring the property the grantee has engaged the landlord's rental agent to continue to manage the property after the transfer and the landlord authorizes the rental agent to provide the information to the grantee and the grantee approves. Not later than ~~10~~ 20 days after transfer of the property, the grantee or the grantee's agent shall:

(1) Notify each tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.

(2) Advise each tenant whether he or she has the right to occupy the property subject to the terms of the vacation rental agreement and the provisions of this section.

(3) Advise each tenant of whether he or she has the right to receive a refund of any payments made by him or her.

Notwithstanding any other provision of this section, if the grantee engages as the grantee's broker and rental agent for the property the broker who procured the tenant's vacation rental agreement for the landlord, the grantee shall have no obligation under subdivisions (1), (2), and (3) of this subsection with regard to those tenants whose vacation rental agreements must be honored under this section or with regard to those tenants whose vacation rental agreements the grantee has agreed in writing to honor."

SECTION 3. G.S. 42A-36 reads as rewritten:

"**§ 42A-36. Mandatory evacuations.**

If State or local authorities, acting pursuant to Article 36A of Chapter 14 or Article 1 of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant ~~in possession of the property~~ under the vacation rental agreement, whether in possession of the property or not, shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the prorated rent for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated ~~him or her~~the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total rent charged for the vacation rental to the tenant."

SECTION 4. This act becomes effective October 1, 2005, and applies to vacation rental agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1541

Committee Substitute Favorable 5/26/05

Third Edition Engrossed 6/1/05

Short Title: Homeowner Association Amendments. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-102(11) reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

...

(11) Impose reasonable charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty-five dollars ($25.00) or ten percent (10%) of the amount of the unpaid assessment and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

...."

SECTION 2. G.S. 47F-3-103 is amended by adding a new subsection to read:

"(f) The association shall publish the names and addresses of all officers and board members of the association within 30 days of their election."

SECTION 3. G.S. 47F-3-107.1 reads as rewritten:

"**§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.**

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges

or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. ~~If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board.~~ The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred ~~fifty~~ dollars ~~($150.00)~~ ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 4. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with general principles of parliamentary procedure so as to facilitate the orderly and efficient completion of business."

SECTION 5. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. ~~The~~ Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, interest, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided

in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. In addition, the notice must either be hand-delivered to the property address or sent certified mail with confirmation of delivery by the U.S. Postal Service to the property address and, if different, to the mailing address for the lot owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 6. G.S. 47F-3-118 reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized ~~agents.~~agents as required in the bylaws and Chapter 55A of the General Statutes. If the

bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of two-thirds of the lot owners present in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

(c) No financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, unless those payments are made for services and expenses on behalf of the association and are given prior approval by the board."

SECTION 7. Article 3 of Chapter 47F of the General Statutes is amended by adding the following new section to read:

"**§ 47F-3-121. American and State flags and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag;
3. United States flag; or
4. North Carolina flag

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: 'THIS

DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA'.

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: 'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS'.

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 7.1. G.S. 47F-1-102 reads as rewritten:

"**§ 47F-1-102. Applicability.**

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), ~~and~~ G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47C-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State."

SECTION 8. G.S. 47C-3-102(11) reads as rewritten:

"**§ 47C-3-102. Powers of unit owners' association.**

(a) Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

...

(11) Impose charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty-five dollars ($25.00) or ten percent (10%) of the amount of the unpaid assessment and, after notice and an

opportunity to be heard, levy reasonable fines not to exceed one hundred ~~fifty~~dollars ~~($150.00)~~($100.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;".

SECTION 9. G.S. 47C-3-103 is amended by adding a new subsection to read:

"(g) The association shall publish the names and addresses of all officers and board members of the association within 30 days of the election."

SECTION 10. G.S. 47C-3-107.1 reads as rewritten:

"**§ 47C-3-107.1. ~~Charges for late payments, fines.~~Procedures for fines and suspension of condominium privileges or services.**

~~The bylaws of the association may provide for a hearing before an adjudicatory panel to determine if a unit owner should be fined not to exceed one hundred fifty dollars ($150.00) for a violation of the declaration, bylaws or rules and regulations of the association. Such panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under G.S. 47C-3-116.~~ Unless a specific procedure for the imposition of fines or suspension of condominium privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 11. G.S. 47C-3-108 reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing

address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided for in the bylaws, meetings of the association and executive board shall be conducted in accordance with general principles of parliamentary procedure so as to facilitate the orderly and efficient completion of business."

SECTION 12. G.S. 47C-3-116 reads as rewritten:

"**§ 47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided therefor by Article 8 of Chapter 44 of the General Statutes. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, ~~The~~ the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to G.S. 47C-3-102(10), (11), and (12), G.S. 47C-3-107(d) and 47C-3-107.1, are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the

office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section ~~must~~ shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47F-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. In addition, the notice must either be hand-delivered to the property address or sent certified mail with confirmation of delivery by the U.S. Postal Service to the property address and, if different, to the mailing address for the unit owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns."

SECTION 13. G.S. 47C-3-118 reads as rewritten:

"**§ 47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's ~~his~~ authorized ~~agents.~~agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of two-thirds of the unit owners present in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish a unit owner or the unit owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a unit. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(c) No financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, unless those payments are made for services and expenses on behalf of the association and are given prior approval by the board."

SECTION 14. Article 3 of Chapter 47C of the General Statutes is amended by adding the following new section to read:

"**§ 47C-3-121. American and State flags and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the

patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:
   1. Flag of the United States of America;
   2. American flag;
   3. United States flag; or
   4. North Carolina flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA'.**

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS'.**

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which

the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 14.1. G.S. 47C-1-102 reads as rewritten:

"**§ 47C-1-102. Applicability.**

(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (~~Charges for Late Payment, Fines~~Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings) 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

(b) The provisions of Chapter 47A, the Unit Ownership Act, do not apply to condominiums created after October 1, 1986 and do not invalidate any amendment to the declaration, bylaws, and plats and plans of any condominium created on or before October 1, 1986 if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 47A, the Unit Ownership Act. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this State, but the public offering statement provisions (G.S. 47C-4-102 through 47C-4-108) apply to all contracts for the dispositions thereof signed in this State by any party unless exempt under G.S. 47C-4-101(b)."

SECTION 15. This act becomes effective January 1, 2006, and applies to violations occurring and proceedings commenced on or after that date and to fiscal years beginning on or after that date.

HOUSE BILL 1541:
Homeowner Association Amendments

BILL ANALYSIS

Committee:		**Date:**	July 13, 2005
Introduced by:	Reps. Earle, Weiss, Stam, Barnhart	**Summary by:**	Martha Walston
Version:	3rd Edition		Staff Attorney

SUMMARY: ***House Bill 1541 3rd edition makes numerous amendments to the existing law affecting both homeowners' associations and condominium unit associations. These amendments include:***

- Capping the late payment of assessments,
- Capping attorneys' fees in uncontested actions,
- Reducing the maximum fine that may be imposed from $150 to $100 a day and adding that the fine applies to each day more than five days after the decision,
- Providing owners notice by first class mail and either certified mail or hand-delivery before attorneys' fees and court costs may be assessed and allowing the owner 15 days from the date of the mailing to pay the outstanding balance without the attorneys' fees and court costs,
- Limiting foreclosure to judicial sale when the debt securing a lien consists solely of fines or service, collection, consulting, or administration fees imposed by the association,
- Prohibiting an association from charging a service, collection, consulting or administration fee from the owner unless expressly allowed by declaration,
- Prohibiting payments to any officer or member of an association's board unless the payments are made for services and expenses on behalf of the association and given prior approval by the board,
- Requiring executive boards to provide owners an opportunity to attend and speak at meetings,
- Requiring associations to maintain detailed records and to provide access to owners,
- Limiting restrictions on the display of the U.S. flag, the North Carolina flag, and political signs unless the deed of conveyance clearly sets out these restrictions.

BILL ANALYSIS: Sections 1 through 7 of the bill make changes to Article 3 of the North Carolina Planned Community Act, governing management of a planned community. Sections 8 through 14 make conforming changes to Article 3 of the North Carolina Condominium Act, governing management of the condominium.

Under current law a **planned community** is defined as "real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. Ownership of a lot does not include holding a leasehold interest of less than 20 years in a lot, including renewal options."

Under current law a **condominium** is defined as "real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners."

Section 1 of the bill places a cap on charges for late payment of assessments not to exceed the greater of $25 or 10% of the amount of the unpaid assessment. Current law authorizes a lot owners' association to impose reasonable late payment of assessments but does not provide a cap.

Section 2 of the bill requires the association to publish the names and addresses of all officers and board members of the association within 30 days of their election.

Section 3 of the bill amends the procedures for fines and suspension of planned community privileges or services as follows:

- Provides that a hearing to determine the imposition of fines or suspension of privileges or services may also be held before the executive board. If a hearing is held before an adjudicatory panel, the panel must be composed of members of the association who are not officers of the association or members of the executive board. Current law provides for a hearing only before an adjudicatory panel appointed by the executive board.
- Provides that if a fine is imposed it may not exceed $100 (now $150), and it may not be imposed without further hearing, for each day more than five days after the decision that the violation occurs.
- Provides a process allowing the lot owner to appeal the decision of the adjudicatory panel to the full executive board.

Section 4 of the bill requires that lot owners must be given an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The board may place reasonable restrictions on the number of speakers and the time allotted to speak. Unless otherwise provided in the bylaws, meetings of the association and executive board must be conducted under general principles of parliamentary procedure.

Section 5 of the bill amends the statute governing liens for assessments as follows:

- Prohibits an association from foreclosing an assessment lien on the lot in the manner as a mortgage on real estate under power of sale when the debt secured by the lien consists solely of fines, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines. However, the association may enforce a lien on the lot by judicial foreclosure. This is a sale of property authorized by order of a judge or clerk.
- Prohibits an association from levying, charging, or attempting to collect a service, collection, consulting, or administration fee from a lot owner unless the fee is expressly allowed in the declaration. Liens securing a debt consisting solely of these fees may only be enforced by judicial foreclosure.
- Makes the following changes to the reasonable attorneys' fees incurred when collecting a debt and enforcing a lien. Current law allows that a judgment, decree, or order in an action under this section shall include costs and reasonable attorneys' fees for the prevailing party:
    - Provides that a lot owner may not be required to pay attorneys' fees and court costs until the owner is notified in writing of the association's intent to seek attorneys' fees and court costs. The notice must be sent by first class mail and either hand-delivered to the owner are sent by certified mail with confirmation of delivery by the U.S. Postal Service. The notice must give the owner 15 days from the mailing of the first class notice to pay the outstanding balance. If the balance is paid within this period then there is no obligation to pay attorneys' fees and court costs. The notice must also inform the lot owner of the

opportunity to contact a representative of the association to discuss paying the outstanding balance in installments. The representative's name and telephone number must be set out in the notice.

- If the lot owner does not contest the collection of the debt and enforcement of a lien after the expiration of the 15-day period following notice, then reasonable attorneys' fees may not exceed $1,200, not including costs or expenses incurred. This fee limitation does not apply to judicial foreclosures, to other actions to recover the sums that create a lien under this section, or to actions to enforce provisions of the articles of incorporation, the declaration, bylaws, or rules.
- The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the owner is obligated to offer or accept any proposed installment schedule.

Section 6 of the bill amends the statute governing association records by adding that the association must also make the records of meetings of the association and executive board available for examination by the unit owner or the owner's authorized agents. The association is also required to make an annual income and expense statement and balance sheet available to lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. A more extensive compilation, review, or audit of the association's books requires a vote of the majority of the executive board or the affirmative vote of two-thirds of the lot owners present or by proxy at an annual meeting or any special meeting. Section 6 also prohibits financial payments, including payments in the form of goods and services, to an officer or member of the association's board unless the payments are made for services and expenses on behalf of the association and given prior approval by the board.

Section 7 of the bill adds a new section that limits the ability of covenants to regulate the display of a U.S. flag or North Carolina flag that is no greater than four feet by six feet unless (1) for restrictions registered prior to October 1, 2005, the restriction specifically uses the terms of flag of the USA, American flag, US flag, or North Carolina flag and (2) for restrictions registered on or after October 1, 2005, the following restriction is written on the first page of the deed of conveyance in boldface type and capital letters: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA".**

Section 7 of the bill also limits the ability of covenants to regulate the indoor or outdoor display of a political sign by an association member on property owned exclusively by the member unless: (1) for restrictions registered prior to October 1, 2005, the restriction specifically uses the term "political signs", and (2) for restrictions registered on or after October 1, 2005, the following restriction is written on the first page of the deed of conveyance in boldface type and capital letters: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS".**

Even when display of political signs is permitted, an association may prohibit the display of the sign earlier than 45 days before the election and later than 7 days after the election. The association may also regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than the local government ordinance regulating size and number of signs on residential property. If there is no local government ordinance, the association must permit at least one political sign with the maximum dimensions of 24 inches by 24 inches.

Section 7.1 of the bill makes the proposed changes to the North Carolina Planned Community Act applicable to planned communities created before January 1, 1999.

Sections 8 through 13 of the bill make conforming changes to the article regulating the management of the condominium under the North Carolina Condominium Act.

EFFECTIVE DATE: The act becomes effective January 1, 2006, and applies to violations occurring and proceedings commenced on or after that date and to fiscal years beginning on or after that date.

H1541e1-SMLA-CSLA

Rep. Paul Stam

From:	Walker Reagan (Research)
Sent:	Saturday, August 06, 2005 5:17 PM
To:	Tim Sellers (E-mail); Henry Jones (E-mail)
Cc:	Rep. Paul Stam; Rep. Jennifer Weiss; Martha Walston (Fiscal Research); Wendy Graf Ray (Research); Tim Hovis (Research)
Subject:	HB 1541 - Homeowner Association Amendments - PCS

Attached is a revised PCS for HB 1541 that I have prepared based on the Rep. Stam and Weiss's discussions with Tim on Tuesday.

As requested, I reviewed the changes requested in Point 5 of Tim's memo of July 22, 2005 in light of Chapter 55A and made the revisions now found on page 5, lines 32 through 38. I did not see a conflict but thought it might be important to make it clear that both 55A and this subsection apply. They do not seem to conflict.

Also as requested, I reviewed the changes suggested in Point 7 against Article 8 of Chapter 44 and agree that reference to Chapter 44 is not appropriate and conforming 47C to 47F in this regard is most appropriate. I have done so. But I could not understand what Tim meant in the last two sentences of Point 7 so no changes were made in that regard.

Also as requested, I reviewed the changes suggested in Point 8 as they conform to the current Uniform Condominium Act. Not only does the Uniform Condominium Act read the same as NC's current Condominium Act, the Uniform Planned Community Act also conforms to the Uniform Condominium Act in this regard. The NC Planned Community Act is the nonconforming provision. I guess the policy decision needs to be made for NC. One would be to leave the law the way it is, with different treatment for condos and planned communities. The other way would be to conform the 2 NC acts, either by changing 47F to conform to the Uniform Act and the 47C, or change 47C to conform to 47F, with both then being nonconforming as to their respective uniform acts. The issue is whether every association, condo or homeowners, should be able to pledge their income stream without express authorization in the declarations.

I have bracketed and bolded those provisions raised in Points 2 and 3 are still under discussion but have not been agreed to.

I will be out of the office on vacation next week. In my absence Martha Walston will be able to make any changes that may be needed in this draft. In addition, Wendy Graf Ray and Tim Hovis will be handling any responsibilities for the bill for the Senate Commerce committee in the event this bill is scheduled to be heard before I return. I have made Martha, Wendy and Tim Hovis managers on the bill.



H1541-CSRU-82.doc

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1541
Committee Substitute Favorable 5/26/05
Third Edition Engrossed 6/1/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1541-CSRK-43 [v.3]

8/10/2005 7:26:27 AM

Short Title: Homeowner Association Amendments. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-102(11) reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

...

(11) Impose reasonable charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty-five dollars ($25.00) or ten percent (10%) of the amount of the unpaid assessment per assessment due and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

...."

SECTION 2. G.S. 47F-3-103(b) reads as rewritten:

"(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members ~~(G.S. 47F-3-103(f));~~(G.S. 47F-3-103(e)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote

of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant."

SECTION 3. G.S. 47F-3-103 is amended by adding a new subsection to read:

"(f) The association shall publish the names and addresses of all officers and board members of the association within 30 days of their election."

SECTION 4. G.S. 47F-3-107.1 reads as rewritten:

"**§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.**

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. ~~If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board.~~ The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred ~~fifty~~ dollars ~~($150.00)~~ ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 5. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda,

including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with general principles of parliamentary procedure so as to facilitate the orderly and efficient completion of business."

SECTION 6. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. ~~The~~ Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, interest, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be

common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 7. G.S. 47F-3-118 reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized ~~agents.~~agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

SECTION 8. Article 3 of Chapter 47F of the General Statutes is amended by adding the following new section to read:

"**§ 47F-3-121. American and State flags and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the

patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:
   1. Flag of the United States of America;
   2. American flag;
   3. United States flag; or
   4. North Carolina flag

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA**'.

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS**'.

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which

the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 9. G.S. 47F-1-102 reads as rewritten:

"**§ 47F-1-102. Applicability.**

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), ~~and~~ G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47C-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated or any smaller majority the

declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State."

SECTION 10. G.S. 47C-3-102(a)(11) reads as rewritten:

"**§ 47C-3-102. Powers of unit owners' association.**

(a) Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

...

(11) Impose charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty-five dollars ($25.00) or ten percent (10%) of the amount of the unpaid assessment per assessment due and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer, and levy reasonable fines not to exceed one hundred ~~fifty~~dollars ~~($150.00)~~($100.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;".

SECTION 11. G.S. 47C-3-102(a)(14) reads as rewritten:

"(14) Assign its right to future income, including the right to receive common expense ~~assessments, but only to the extent the declaration expressly so provides;~~assessments."

SECTION 12. G.S. 47C-3-103(b) reads as rewritten:

"(b) The executive board may not act on behalf of the association to amend the declaration (G.S. 47C-2-117), to terminate the condominium (G.S. 47C-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members ~~(G.S. 47C-3-103(f)).~~(G.S. 47C-3-103(e) and (f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than members appointed by the declarant."

SECTION 13. G.S. 47C-3-103 is amended by adding a new subsection to read:

"(g) The association shall publish the names and addresses of all officers and board members of the association within 30 days of the election."

SECTION 14. G.S. 47C-3-107.1 reads as rewritten:

"**§ 47C-3-107.1. ~~Charges for late payments, fines.~~Procedures for fines and suspension of condominium privileges or services.**

~~The bylaws of the association may provide for a hearing before an adjudicatory panel to determine if a unit owner should be fined not to exceed one hundred fifty dollars ($150.00) for a violation of the declaration, bylaws or rules and regulations of the association. Such panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under G.S. 47C-3-116.~~ Unless a specific procedure for the imposition of fines or suspension of condominium privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 15. G.S. 47C-3-108 reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions

on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided for in the bylaws, meetings of the association and executive board shall be conducted in accordance with general principles of parliamentary procedure so as to facilitate the orderly and efficient completion of business."

SECTION 16. G.S. 47C-3-116 reads as rewritten:

"**§ 47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided ~~therefor by Article 8 of Chapter 44 of the General Statutes.~~herein. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, ~~The~~ the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to G.S. 47C-3-102(10), (11), and (12), G.S. 47C-3-107(d) and 47C-3-107.1, are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section ~~must~~ shall include costs and reasonable attorneys' fees for the prevailing party. If the unit

owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47F-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 17. G.S. 47C-3-118 reads as rewritten:

"**§ 47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's ~~his~~ authorized ~~agents.~~agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish a unit owner or the unit owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a unit. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

SECTION 18. Article 3 of Chapter 47C of the General Statutes is amended by adding the following new section to read:

"**§ 47C-3-121. American and State flags and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag;
3. United States flag; or

4 North Carolina flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA**'.

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS**'.

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property

who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 19. G.S. 47C-1-102 reads as rewritten:

"**§ 47C-1-102. Applicability.**

(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (~~Charges for Late Payment, Fines~~Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings) 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

(b) The provisions of Chapter 47A, the Unit Ownership Act, do not apply to condominiums created after October 1, 1986 and do not invalidate any amendment to the declaration, bylaws, and plats and plans of any condominium created on or before October 1, 1986 if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 47A, the Unit Ownership Act. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this State, but the public offering statement provisions (G.S. 47C-4-102 through 47C-4-108) apply to all contracts for the dispositions thereof signed in this State by any party unless exempt under G.S. 47C-4-101(b)."

SECTION 20. This act becomes effective January 1, 2006, and applies to violations occurring and proceedings commenced on or after that date and to fiscal years beginning on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1541

Committee Substitute Favorable 5/26/05

Third Edition Engrossed 6/1/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1541-PCS30369-RK-43

Short Title: Homeowner Association Amendments. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-102(11) reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

...

(11) Impose reasonable charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty-five dollars ($25.00) or ten percent (10%) of the amount of the unpaid assessment per assessment due and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

...."

SECTION 2. G.S. 47F-3-103(b) reads as rewritten:

"(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members ~~(G.S. 47F-3-103(f)),~~(G.S. 47F-3-103(e)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote

of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant."

SECTION 3. G.S. 47F-3-103 is amended by adding a new subsection to read:

"(f) The association shall publish the names and addresses of all officers and board members of the association within 30 days of their election."

SECTION 4. G.S. 47F-3-107.1 reads as rewritten:

"**§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.**

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. ~~If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board.~~ The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred ~~fifty~~ dollars ~~($150.00)~~ ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 5. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda,

including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with general principles of parliamentary procedure so as to facilitate the orderly and efficient completion of business."

SECTION 6. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. ~~The~~ Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, interest, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be

common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 7. G.S. 47F-3-118 reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized ~~agents.~~agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

SECTION 8. Article 3 of Chapter 47F of the General Statutes is amended by adding the following new section to read:

"**§ 47F-3-121. American and State flags and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the

patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:
   1. Flag of the United States of America;
   2. American flag;
   3. United States flag; or
   4. North Carolina flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA**'.

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS**'.

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which

the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 9. G.S. 47F-1-102 reads as rewritten:

"**§ 47F-1-102. Applicability.**

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), ~~and~~ G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47C-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated or any smaller majority the

declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State."

SECTION 10. G.S. 47C-3-102(a)(11) reads as rewritten:

"**§ 47C-3-102. Powers of unit owners' association.**

(a) Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

...

(11) Impose charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty-five dollars ($25.00) or ten percent (10%) of the amount of the unpaid assessment per assessment due and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer, and levy reasonable fines not to exceed one hundred ~~fifty~~dollars ~~($150.00)~~($100.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;".

SECTION 11. G.S. 47C-3-102(a)(14) reads as rewritten:

"(14) Assign its right to future income, including the right to receive common expense ~~assessments, but only to the extent the declaration expressly so provides;~~assessments."

SECTION 12. G.S. 47C-3-103(b) reads as rewritten:

"(b) The executive board may not act on behalf of the association to amend the declaration (G.S. 47C-2-117), to terminate the condominium (G.S. 47C-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members ~~(G.S. 47C-3-103(f)),~~(G.S. 47C-3-103(e) and (f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than members appointed by the declarant."

SECTION 13. G.S. 47C-3-103 is amended by adding a new subsection to read:

"(g) The association shall publish the names and addresses of all officers and board members of the association within 30 days of the election."

SECTION 14. G.S. 47C-3-107.1 reads as rewritten:

"**§ 47C-3-107.1. ~~Charges for late payments, fines.~~Procedures for fines and suspension of condominium privileges or services.**

~~The bylaws of the association may provide for a hearing before an adjudicatory panel to determine if a unit owner should be fined not to exceed one hundred fifty dollars ($150.00) for a violation of the declaration, bylaws or rules and regulations of the association. Such panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under G.S. 47C-3-116.~~ Unless a specific procedure for the imposition of fines or suspension of condominium privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 15. G.S. 47C-3-108 reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions

on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided for in the bylaws, meetings of the association and executive board shall be conducted in accordance with general principles of parliamentary procedure so as to facilitate the orderly and efficient completion of business."

SECTION 16. G.S. 47C-3-116 reads as rewritten:

"**§ 47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided ~~therefor by Article 8 of Chapter 44 of the General Statutes.~~herein. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, ~~The~~ the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to G.S. 47C-3-102(10), (11), and (12), G.S. 47C-3-107(d) and 47C-3-107.1, are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section ~~must~~ shall include costs and reasonable attorneys' fees for the prevailing party. If the unit

owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47F-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 17. G.S. 47C-3-118 reads as rewritten:

"**§ 47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's ~~his~~ authorized ~~agents.~~agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish a unit owner or the unit owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a unit. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

SECTION 18. Article 3 of Chapter 47C of the General Statutes is amended by adding the following new section to read:

"**§ 47C-3-121. American and State flags and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag;
3. United States flag; or

4. North Carolina flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA'.**

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS'.**

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property

who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 19. G.S. 47C-1-102 reads as rewritten:

"**§ 47C-1-102. Applicability.**

(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (~~Charges for Late Payment, Fines~~Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

(b) The provisions of Chapter 47A, the Unit Ownership Act, do not apply to condominiums created after October 1, 1986 and do not invalidate any amendment to the declaration, bylaws, and plats and plans of any condominium created on or before October 1, 1986 if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 47A, the Unit Ownership Act. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this State, but the public offering statement provisions (G.S. 47C-4-102 through 47C-4-108) apply to all contracts for the dispositions thereof signed in this State by any party unless exempt under G.S. 47C-4-101(b)."

SECTION 20. This act becomes effective January 1, 2006, and applies to violations occurring and proceedings commenced on or after that date and to fiscal years beginning on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 735

Committee Substitute Favorable 4/27/05

Short Title: Accident & Health Insur./Rate Stabilization.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANNUAL FILING AND ACTUARIAL CERTIFICATION OF RATES FOR INSURERS PROVIDING INDIVIDUAL ACCIDENT AND HEALTH INSURANCE BENEFITS AND TO BETTER PROTECT CONSUMERS FROM THE HARMFUL IMPACT OF BLOCKS OF BUSINESS BEING CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-95(f) reads as rewritten:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(f) An insurer may ~~increase~~ revise rates chargeable on policies subject to this section, other than noncancellable policies, with the approval of the Commissioner if the Commissioner finds that the revised rates are not excessive, not inadequate, and not unfairly discriminatory; and exhibit a reasonable relationship to the benefits provided by the policies. The approved rates shall be guaranteed by the insurer, as to the policyholders affected by the rates, for a period of not less than 12 months; or as an alternative to the insurer giving the guarantee, the approved rates may be applicable to all policyholders at one time if the insurer chooses to apply for that relief with respect to those policies no more frequently than once in any 12-month period. The rates shall be applicable to all policies of the same type; provided that no rate ~~increase~~ revision may become effective for any policy unless the insurer has given the policyholder written notice of the rate revision 45 days before the effective date of the revision. The policyholder must then pay the revised rate in order to continue the policy in force. The Commissioner may adopt reasonable rules, after notice and hearing, to require the submission of supporting data and such information as the Commissioner considers necessary to determine whether the rate revisions meet these standards. In adopting the rules under this subsection, the Commissioner may require identification of the types of rating methodologies used by filers and may also address issue age or attained age

rating, or both; policy reserves used in rating; and other recognized actuarial principles of the NAIC, the American Academy of Actuaries, and the Society of Actuaries."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsections to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(g) Every policy that is subject to this section and that provides individual accident and health insurance benefits to a resident of this State shall return to policyholders benefits that are reasonable in relation to the premium charged. The Commissioner may adopt rules or utilize existing rules to establish minimum standards for loss ratios of policies on the basis of incurred claims experience and earned premiums in accordance with accepted actuarial principles and practices to assure that the benefits are reasonable in relation to the premium charged. Every insurer providing policies in this State subject to this section shall not less than annually file for approval its rates, rating schedules, and supporting documentation to demonstrate compliance with the applicable loss ratio standards of this State as adopted by the Commissioner. All filings of rates and rating schedules shall comply with the standards adopted by the Commissioner. The filing shall include a certification by an individual who is either a Fellow or an Associate of the Society of Actuaries or a Member of the American Academy of Actuaries that the rates are not excessive, not inadequate, and not unfairly discriminatory; and that the rates exhibit a reasonable relationship to the benefits provided by the policy. Nothing in this subsection shall require an insurer to provide certification with respect to a previous rate period, or to require an insurer to reduce properly filed and approved rates before the end of a rate period. This subsection does not apply to any long-term care policy issued in this State on or after February 1, 2003, and noncancellable accident and health insurance.

(h) For any long-term care policy issued in this State on or after February 1, 2003, an insurer shall on or before March 15 of each year:

(1) Provide to the Commissioner an actuarial certification listing all of its long-term care policy forms available for sale in this State as of December 31 of the prior year, stating that the current premium rate schedule for each form is sufficient to cover anticipated costs under moderately adverse experience and stating that the premium rate schedule is reasonably expected to be sustainable over the file of the form with no future premium increases anticipated.

(2) For any policy form for which the statement in subdivision (1) of this subsection cannot be made or is qualified, submit a plan of corrective action to the Commissioner for approval.

(i) For purposes of this section, accident and health insurance means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or

other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof."

SECTION 2. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-275. Closure of a block of business.**

(a) An insurer that determines to create a closed block of business in this State shall:

(1) Within five business days of making the determination to close a block of business, notify the Commissioner in writing of the insurer's decision to cease sales of the policy and of the expected impact on future premiums.

(2) Within 20 days of making the determination to close a block of business, inform each agent and broker selling the product of the decision and cease all marketing activities regarding that business.

(3) Within 30 days, notify all policyholders of the determination and of its expected impact on future premiums. Notice shall comply with any rules adopted pursuant to subsection (b) of this section.

(b) The Commissioner may adopt rules to carry out the purposes and provisions of this section, including rules establishing the language, content, format, and methods of distribution of the notices required by this section.

(c) As used in this section, the term:

(1) 'Accident and health insurance' means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof.

(2) 'Block of business' means a particular policy form or contract of individual accident and health insurance issued by an insurer.

(3) 'Closed block of business' means a block of business for which an insurer ceases to actively market, sell, and issue new contracts under a particular policy form in this State.

(4) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(d) This section does not apply when an insurer makes a decision to discontinue a particular policy form or contract of accident and health insurance coverage subject to

Article 68 of this Chapter, cancels or nonrenews the coverage, and offers replacement coverage pursuant to G.S. 58-68-65(c)(1)."

SECTION 3. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(g),(h), (i).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 4. This act becomes effective July 1, 2006.

HOUSE BILL 735:
Accident & Health Insur./Rate Stabilization.-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Date:**	June 29, 2005
Introduced by:	Reps. Holliman, Wright	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: The Proposed Committee Substitute to House Bill 735 makes changes to the statutes governing accident and health insurance benefits and includes a new provision governing the closing of blocks of business

[As introduced, this bill was identical to S848, as introduced by Sen. Malone, which is currently in Senate Commerce.]

Section 1 the Proposed Committee Substitute make the following changes:

- *Requires all accident and health insurance policies (except long-tem care policies) to provide benefits that are reasonable to the premium charged.*
- *Authorizes the Commissioner to adopt rules establishing minimum standards for loss ratios on the basis incurred claims experience and earned premiums; Require all accident and health insurers (except long–term care insurers) to annually file rates, rating schedules, and supporting documentation, including actuarial certification, for the Commissioner's approval to demonstrate compliance with these loss ratios.*
- *Requires long-term care insurers to provide an actuarial certification listing all long-term care policy forms in the State stating that the current premium rate schedule is sufficient to cover anticipated costs; Submit a plan of corrective action for the Commissioner's approval if the certification cannot be made or is qualified.*

This section would apply to hospital, medical, and dental service corporations, including Blue Cross and Blue Shield and Delta Dental.

Section 2 of the Proposed Committee Substitute would add a new section to Chapter 58 governing the closing of blocks of business by accident and health insurers. This section would require an insurer to provide the following notices a minimum of sixty days prior to the closure date:

- *Notify the Commissioner of making a determination to close a block of business.*
- *Notify each agent and broker selling of the determination. The insurer must also cease all marketing activities of the product.*
- *Notify all policyholders of the determination and the expected impact of the closing on future premiums.*

Under the bill, a closed block of business is defined as "a block of business for which an insurer ceases to actively market, sell, and issue new contracts under a particular policy form in the State."

EFFECTIVE DATE: House Bill 735 becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 735

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H735-CSRG-32 [v.2]

6/29/2005 4:56:50 PM

Short Title: Accident & Health Insur./Rate Stabilization.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANNUAL FILING AND ACTUARIAL CERTIFICATION OF RATES FOR INSURERS PROVIDING INDIVIDUAL ACCIDENT AND HEALTH INSURANCE BENEFITS AND TO BETTER PROTECT CONSUMERS FROM THE HARMFUL IMPACT OF BLOCKS OF BUSINESS BEING CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-95(f) reads as rewritten:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(f) An insurer may ~~increase~~ revise rates chargeable on policies subject to this section, other than noncancellable policies, with the approval of the Commissioner if the Commissioner finds that the revised rates are not excessive, not inadequate, and not unfairly discriminatory; and exhibit a reasonable relationship to the benefits provided by the policies. The approved rates shall be guaranteed by the insurer, as to the policyholders affected by the rates, for a period of not less than 12 months; or as an alternative to the insurer giving the guarantee, the approved rates may be applicable to all policyholders at one time if the insurer chooses to apply for that relief with respect to those policies no more frequently than once in any 12-month period. The rates shall be applicable to all policies of the same type; provided that no rate ~~increase~~ revision may become effective for any policy unless the insurer has given the policyholder written notice of the rate revision 45 days before the effective date of the revision. The policyholder must then pay the revised rate in order to continue the policy in force. The Commissioner may adopt reasonable rules, after notice and hearing, to require the submission of supporting data and such information as the Commissioner considers necessary to determine whether the rate revisions meet these standards. In adopting the

rules under this subsection, the Commissioner may require identification of the types of rating methodologies used by filers and may also address issue age or attained age rating, or both; policy reserves used in rating; and other recognized actuarial principles of the NAIC, the American Academy of Actuaries, and the Society of Actuaries."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsections to read:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

...

(g) Every policy that is subject to this section and that provides individual accident and health insurance benefits to a resident of this State shall return to policyholders benefits that are reasonable in relation to the premium charged. The Commissioner may adopt rules or utilize existing rules to establish minimum standards for loss ratios of policies on the basis of incurred claims experience and earned premiums in accordance with accepted actuarial principles and practices to assure that the benefits are reasonable in relation to the premium charged. Every insurer providing policies in this State subject to this section shall not less than annually file for approval its rates, rating schedules, and supporting documentation to demonstrate compliance with the applicable loss ratio standards of this State as adopted by the Commissioner. All filings of rates and rating schedules shall comply with the standards adopted by the Commissioner. The filing shall include a certification by an individual who is either a Fellow or an Associate of the Society of Actuaries or a Member of the American Academy of Actuaries that the rates are not excessive, not inadequate, and not unfairly discriminatory; and that the rates exhibit a reasonable relationship to the benefits provided by the policy. Nothing in this subsection shall require an insurer to provide certification with respect to a previous rate period, or to require an insurer to reduce properly filed and approved rates before the end of a rate period. This subsection does not apply to any long-term care policy issued in this State on or after February 1, 2003, and noncancellable accident and health insurance.

(h) For any long-term care policy issued in this State on or after February 1, 2003, an insurer shall on or before March 15 of each year:

(1) Provide to the Commissioner an actuarial certification listing all of its long-term care policy forms available for sale in this State as of December 31 of the prior year, stating that the current premium rate schedule for each form is sufficient to cover anticipated costs under moderately adverse experience and stating that the premium rate schedule is reasonably expected to be sustainable over the ~~file~~life of the form with no future premium increases anticipated.

(2) For any policy form for which the statement in subdivision (1) of this subsection cannot be made or is qualified, submit a plan of corrective action to the Commissioner for approval.

(i) For purposes of this section, accident and health insurance means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare

supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof. Notwithstanding any other provision to the contrary, this section does not apply to disability income insurance."

SECTION 2. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-275. Closure of a block of business.**

(a) An insurer that determines to create a closed block of business in this State shall no later than 60 days prior to the closure date,:

(1) Notify the Commissioner in writing of the insurer's decision to cease sales of the policy form(s) and provide a reasonable estimate, based on sound actuarial principles, of the expected impact on future premiums of ceasing sales of the policy form(s). If the insurer's qualified actuary estimates that the expected impact on future annual premiums of ceasing sales of the policy form(s) exceeds five percent (5%) per annum, then the insurer shall comply with the requirements of sub-subsection(3) of this section. If each subsequent annual premium rate filing results in an approved annual premium rate increase no greater than the last premium rate increase approved when the block of insurance was open, plus five percent (5%), then the insurer shall not be required to comply with the requirements of sub-subsection (3) of this section. If any subsequent annual premium rate filing results in an approved premium rate increase in excess of five percent (5%) per annum more than the last premium rate increase approved while the block of insurance was open, then the insurer shall comply with the requirements of sub-subsection (3) of this section at the time the filing is approved.

(2) Inform each agent and broker selling the product of the decision and the date of closure.

(3) If required pursuant to sub-subsection (1) of this section, notify all affected policyholders of the determination and provide a statement of the general effect that might be expected to result from the closure of the block. Notice shall comply with any rules adopted pursuant to subsection (b) of this section.

(b) The Commissioner may adopt rules to carry out the purposes and provisions of this section, including rules establishing the language, content, format, and methods of distribution of the notices required by this section.

(c) As used in this section, the term:

(1) 'Accident and health insurance' means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed

indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof.

(2) 'Block of business' means a particular policy form or contract of individual accident and health insurance issued by an insurer.

(3) 'Closed block of business' means a block of business for which an insurer ceases to actively market, sell, and issue new contracts under a particular policy form in this State.

(4) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(5) 'Closure date' means the effective date that no new insureds will be issued coverage of the particular policy form(s).

(6) 'Policyholders' includes those applicants for the particular policy form that is being closed and for which the policy is not yet issued.

(d) This section does not apply when an insurer makes a decision to discontinue a particular policy form or contract of accident and health insurance coverage subject to Article 68 of this Chapter, cancels or nonrenews the coverage, and offers replacement coverage pursuant to G.S. 58-68-65(c)(1)."

SECTION 3. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.

G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(g),(h), (i).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 4. This act becomes effective July 1, 2006.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 735 DATE August 10, 2005

S. B. No. Proposed Committee Sub. Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Hoyle

1 moves to amend the bill on page 3, line 5

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 "combination thereof. Notwithstanding any other provision to

5 the contrary, subsection (g) of this section"

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 735

Committee Substitute Favorable 4/27/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H735-PCS60530-RG-35

Short Title: Accident & Health Insur./Rate Stabilization.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANNUAL FILING AND ACTUARIAL CERTIFICATION OF RATES FOR INSURERS PROVIDING INDIVIDUAL ACCIDENT AND HEALTH INSURANCE BENEFITS AND TO BETTER PROTECT CONSUMERS FROM THE HARMFUL IMPACT OF BLOCKS OF BUSINESS BEING CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-95(f) reads as rewritten:

"**§ 58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

(f) An insurer may ~~increase~~ revise rates chargeable on policies subject to this section, other than noncancellable policies, with the approval of the Commissioner if the Commissioner finds that the revised rates are not excessive, not inadequate, and not unfairly discriminatory; and exhibit a reasonable relationship to the benefits provided by the policies. The approved rates shall be guaranteed by the insurer, as to the policyholders affected by the rates, for a period of not less than 12 months; or as an alternative to the insurer giving the guarantee, the approved rates may be applicable to all policyholders at one time if the insurer chooses to apply for that relief with respect to those policies no more frequently than once in any 12-month period. The rates shall be applicable to all policies of the same type; provided that no rate ~~increase~~ revision may become effective for any policy unless the insurer has given the policyholder written notice of the rate revision 45 days before the effective date of the revision. The policyholder must then pay the revised rate in order to continue the policy in force. The Commissioner may adopt reasonable rules, after notice and hearing, to require the submission of supporting data and such information as the Commissioner considers necessary to determine whether the rate revisions meet these standards. In adopting the rules under this subsection, the Commissioner may require identification of the types of

rating methodologies used by filers and may also address issue age or attained age rating, or both; policy reserves used in rating; and other recognized actuarial principles of the NAIC, the American Academy of Actuaries, and the Society of Actuaries."

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(2) For any policy form for which the statement in subdivision (1) of this subsection cannot be made or is qualified, submit a plan of corrective action to the Commissioner for approval.

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(2) Inform each agent and broker selling the product of the decision and the date of closure.

(3) If required pursuant to subdivision (1) of this subsection, notify all affected policyholders of the determination and provide a statement of the general effect that might be expected to result from the closure of the block. Notice shall comply with any rules adopted pursuant to subsection (b) of this section.

(b) The Commissioner may adopt rules to carry out the purposes and provisions of this section, including rules establishing the language, content, format, and methods of distribution of the notices required by this section.

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G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.

G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(g),(h), (i).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 4. This act becomes effective July 1, 2006.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	[signature]
John Hoonani	NCDOL
Conor Kurtich	NCDOL
[illegible]	NCDOL
Andrew Ritter	NCDOL
[signature]	NCSS
Pat Stith	NCSU
Rick Zechini	NCSU
Leslie Winner	University
[signature]	
Chris Kuller	self-user

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
FRANK W. FOLGER	N.C. DOJ
Robbie Quinn	NCDOT / DMV
Jeffrey Edwards	NCDOJ
Wm Williamson	DOT/DMV
Colleen Kocharek	HYMH
DAVID BARNES	Poyner + Spruill
John Mayo	GOO office
L Coe	CFSA
[illegible]	NCFB
Portia Manley	NCDOT / DMV
Kevin Fitzgerald	UNC CH

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Mike Carey	Carey & Associates
Stephanie Gray	ElectriCities
Lisa Reese	Duke Energy
John Poteat	
Margaret Weatherly	KC&H
Kathleen Edwards	UNC-CH Institute of Gov't
Jane Royall	NC Family Policy Council
Tab Young	ACLU/ARLTC
Michelle Frazier	NC Bar Assn
Bill Toe	NCAFC
Henry Jones	Attorney - Raleigh

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	Intern - Senator Conrad
Nancy Thompson	NRCK
Gary Salamido	GSK
Chris Galanis	McGuireWoods
John Goodman	Alley Associates
[illegible]	[illegible]
Bill Hoke	ACLI
Alastair Mackay	NCHSA
[illegible]	NCLM
Bill Lowe	NC Justice Ctr
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 10, 2005 PM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Paula A. Hoyt	El Pueblo
[illegible]	[illegible] Assoc
[illegible]	Parks Cmp
[illegible]	House
[illegible]	NCU
[illegible]	[illegible]
Stephanie Dorko	Charlotte Chamber
David Fox	Alley Assoc.
Paul Pully	NCAFL
[illegible]	NC Justice Ctr.

SENATE COMMERCE COMMITTEE
Thursday, August 11, 2005, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 196	Amend Tobacco Reserve Fund	Senator Garrou
SB 947	Regulate Deferred Deposits	Senator Hoyle
SB 984	Amend Worker's Compensation Act	Senator Hoyle
SB 402	Water/Utilities Savings in Govt. Facilities	Senator Kinnaird
HB 630	Manufactured Homes Escrow Accounts	Representative Goforth
HB 657	Producer Comp. Transparency and Broker Duty	Representative Holliman
HB 813	Prohibiting Solicitations on State Highways	Representative Allred
HB 818	Worker's Comp./Driver's Status	Representative Sutton
HB 859	Continuing Education of Mortgage Brokers	Representative Brubaker Representative Church Representative LaRoque
HB 1025	Wine Making on Premises Permit	Representative Luebke
HB 1271	Amend Auctioneer Licensing Laws	Representative Culpepper
HB 1291	Eliminate Continuing Ed. Req's. Locksmiths	Representative Allred
HB 1389	Clarify Wineries Wholesale License	Representative Gibson Representative Harrell
HB 1390	Amend ABC Transportation Limit	Representative Gibson Representative Harrell
HB 1411	Update Consumer Credit Sales Cap	Representative Lubke
HB 1468	Telecommunication Service Providers	Representative Saunders Representative Brubaker
HB 1518	ABC Licensees to Recycle Beverage Containers	Representative Hackney
HB1522	Amend State Ports Enabling Legislation	Representative McComas

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, August 11, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on August 11, 2005, in Room 1027 of the Legislative Building. Twenty-one members of the Committee were present. Pages assisting with the meeting were Evan Jones of Raleigh, sponsored by Senator Cowell; Mary Catherine Hollowell of Goldsboro, sponsored by Senator Kerr; Virginia May of Goldsboro, sponsored by Senator Kerr; and Thomas Draper of Raleigh, sponsored by Senator Smith. Senator R. C. Soles, Jr. presided.

Following Committee discussion of HCS 813, Prohibiting Solicitations on State Highways, Senator Blake moved a favorable report of the bill. The motion carried.

Senator Soles recognized Senator Kinnaird to explain SB 402, Water/Utilities Savings in Govt. Facilities. Senator Dorsett moved a favorable report of the bill. The motion carried.

Following Committee discussion of HCS 1271, Amend Auctioneer Licensing Laws, Senator Rand moved for a favorable report of the bill. The motion carried.

Following Committee discussion of HB 1390, Amend ABC Transportation Limit, Senator Rand moved a favorable report of the bill. The motion carried.

Senator Soles recognized Mr. T. Gerry Williams, N. C. Restaurant Association to speak on HCS 1518, ABC Licensees to Recycle Beverage Containers. Senator Soles displaced the bill until Representative Hackney could be present.

Senator Rand moved the adoption of a proposed Senate Committee Substitute for HCS 630, Manufactured Homes Escrow Accounts. The motion carried. Senator Soles recognized Senator Nesbitt to explain the bill. Bill Rowe of the North Carolina Justice Center and Frank Folger of the North Carolina Department of Insurance assisted in answering questions raised by Committee members. Senator Apodaca moved a favorable report of the proposed Senate Committee Substitute bill. The motion carried.

Senator Hoyle moved adoption of the proposed Senate Committee Substitute for HCS 1468, Telecommunication Service Providers. The motion carried. Senator Soles recognized Representative Saunders to explain the bill. Steve Rose of the Research Staff assisted in the explanation of the bill. Senator Hoyle moved a favorable report of the proposed Senate Committee Substitute bill. The motion carried.

Senator Soles recognized Representative Hackney to explain HCS 1518, ABC Licensees to Recycle Beverage Containers, which was temporarily displaced earlier. Senator Rand sent forth an amendment and moved its adoption. The motion carried. Senator Rand moved a favorable report of the bill, as amended, and that the amendment be engrossed into a Senate Committee Substitute bill. The motion carried.

Following Committee discussion of HB 1389, Clarify Wineries Wholesale License, Senator Rand moved a favorable report of the bill. The motion carried.

The meeting adjourned at 12:05 p.m.

Senator R. C. Soles, Jr., Presiding

Joan Leatherman, Committee Assistant
Mona Fitzgerald, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, August 11, 2005

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

FAVORABLE

S.B. **402** Water/Utilities Savings in Govt. Facilities.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **813** Prohibiting Solicitations on State Highways.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1271** Amend Auctioneer Licensing Laws.
Sequential Referral: None
Recommended Referral: None

H.B. **1389** Clarify Wineries Wholesale License.
Sequential Referral: None
Recommended Referral: None

H.B. **1390** Amend ABC Transportation Limit.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **630** Manufactured Homes Escrow Accounts.
Draft Number: PCS50490
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1468** Telecommunication Service Providers.

Draft Number:	PCS30372
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1518** ABC Licensees to Recycle Beverage Containers.

Draft Number:	DRS80451
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 8

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 813

Committee Substitute Favorable 4/7/05
Third Edition Engrossed 4/20/05

Short Title: Prohibiting Solicitations on State Highways. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO ENACT ORDINANCES TO RESTRICT OR PROHIBIT SOLICITATION ON STATE HIGHWAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-175 is amended by adding a new subsection to read:

"(d) Local governments may enact ordinances restricting or prohibiting a person from standing on any street, highway, or right-of-way excluding sidewalks while soliciting, or attempting to solicit, any employment, business, or contributions from the driver or occupants of any vehicle. This subsection does not permit additional restrictions or prohibitions on the activities of licensees, employees, or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 402*

Short Title:	Water/Utilities Savings in Govt. Facilities.	(Public)
Sponsors:	Senators Kinnaird, Horton; Cowell, and Shaw.	
Referred to:	Commerce.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT GUARANTEED ENERGY SAVINGS CONTRACTS INCLUDE CONSERVATION MEASURES FOR WATER AND OTHER UTILITIES, TO RAISE THE CAP FOR GUARANTEED ENERGY SAVINGS CONTRACTS, TO EXPAND THE STATE'S ENERGY POLICY AND LIFE-CYCLE COST ANALYSIS TO INCLUDE THE CONSERVATION OF WATER AND OTHER UTILITIES, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 3B of Chapter 143 of the General Statutes reads as rewritten: "~~Energy~~ Conservation of Energy, Water, and Other Utilities in ~~Public~~ Government Facilities."

SECTION 2. G.S. 143-64.17 reads as rewritten:

"**§ 143-64.17. Definitions.**

As used in this Part:

(1) "Energy conservation measure" means a facility alteration, training, or services related to the operation of the facility, when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.

c. Automatic energy control systems.

d. Heating, ventilating, or air-conditioning system modifications or replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.

f. Energy recovery systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.

~~h. Other energy conservation measures.~~

i. Faucets with automatic or metered shut-off valves, leak detection equipment, water recycling equipment, and wastewater recovery systems.

j. Other energy conservation measures that conserve energy, water, or other utilities.

(2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility costs, or operating ~~costs~~ costs, including environmental discharge fees and water and sewer maintenance fees, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel costs, energy costs, or operating costs~~such costs developed by the governmental unit.

(2a) "Governmental unit" means either a local governmental unit or a State governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:

a. The name and address of the governmental unit.

b. The name, address, title, and telephone number of a contact person in the governmental unit.
c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
d. The date, time, and place where proposals must be received.
e. The evaluation criteria for assessing the proposals.
f. A statement reserving the right of the governmental unit to reject any or all the proposals.
g. Any other stipulations and clarifications the governmental unit may require.

(7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions."

SECTION 3. G.S. 143-64.17G reads as rewritten:

"**§ 143-64.17G. Report on guaranteed energy savings ~~contracts.~~contracts entered into by local governmental units.**

A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission. The Commission shall compile the information and report it biennially to the Joint Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the assistance of the Office of State Construction, shall evaluate whether expected savings have in fact been realized."

SECTION 4. G.S. 143-64.17H reads as rewritten:

"**§ 143-64.17H. ~~Guaranteed~~ Report on guaranteed energy savings ~~contract reporting requirements.~~contracts entered into by State governmental units.**

A State governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the State Energy Office of the Department of Administration within 30 days of the date the contract is entered into. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract and shall evaluate whether expected savings have in fact been realized."

SECTION 5. G.S. 142-63 reads as rewritten:

"**§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate principal amount payable by the State under financing contracts entered pursuant to this Article shall not exceed ~~fifty million dollars ($50,000,000)~~ seventy-five million dollars ($75,000,000) at any one time."

SECTION 6. G.S. 143-64.10 reads as rewritten:

"**§ 143-64.10. Findings; policy.**

(a) The General Assembly ~~hereby finds:~~finds all of the following:

(1) That the State shall take a leadership role in aggressively undertaking ~~energy~~ the conservation of energy, water, and other utilities in North ~~Carolina;~~Carolina.

(2) That State facilities have a significant impact on the State's consumption of ~~energy;~~energy, water, and other utilities.

(3) That ~~energy conservation~~ practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of ~~energy;~~energy, water, and other utilities.

(4) That the cost of the ~~energy~~ energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial ~~cost;~~cost.

(5) That the cost of ~~energy~~ energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the ~~energy~~ energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects ~~energy consumption; and~~ the consumption of energy, water, or other utilities.

(6) That State government shall undertake a program to reduce ~~energy~~ the use of energy, water, and other utilities in State facilities and equipment in those facilities in order to provide its citizens with an example of ~~energy use~~energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that ~~energy conservation~~ practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of State facilities and in the purchase, operation, and maintenance of equipment for State facilities."

SECTION 7. G.S. 143-64.11(2) reads as rewritten:

"(2) "Energy-consumption analysis" means the evaluation of all energy-consuming ~~systems~~systems, including systems that consume water or

other utilities, and components of these systems by demand and type of ~~energy,~~energy or other utility use, including the internal energy load imposed on a facility by its occupants, equipment and components, and the external energy load imposed on the facility by climatic conditions."

SECTION 8. G.S. 143-64.11(2b) reads as rewritten:

"(2b) "Energy-consuming system" includes but is not limited to any of the following equipment or measures:

a. Equipment used to heat, cool, or ventilate the facility;
b. Equipment used to heat water in the facility;
c. Lighting systems;
d. On-site equipment used to generate electricity for the facility;
e. On-site equipment that uses the sun, wind, oil, natural gas, liquid propane gas, coal, or electricity as a power source; and
f. Energy conservation ~~measures~~ measures, as defined in G.S. 143-64.17, in the facility design and construction that decrease the ~~energy~~ energy, water, or other utility requirements of the facility."

SECTION 9. G.S. 143-64.11(3) reads as rewritten:

"(3) "Facility" means a building or a group of buildings served by a central ~~energy~~ distribution system for energy, water, or other utility or components of a central ~~energy~~ distribution system."

SECTION 10. G.S. 143-64.12 reads as rewritten:

"**§ 143-64.12. Authority and duties of State agencies.**

(a) The General Assembly authorizes and directs that State agencies shall carry out the construction and renovation of State facilities, under their jurisdiction in such a manner as to further the policy declared herein, ensuring the use of life-cycle cost analyses and ~~energy conservation practices.~~practices to conserve energy, water, and other utilities.

(b) The Department of Administration shall develop and implement policies, procedures, and standards to ensure that State purchasing practices improve ~~energy~~ efficiency regarding energy, water, and other utility use and take the cost of the product over the economic life of the product into consideration. The Department of Administration shall adopt and implement Building Energy Design Guidelines. These guidelines shall include energy-use goals and standards, economic assumptions for life-cycle cost analysis, and other criteria on building systems and technologies. The Department of Administration shall modify the design criteria for construction and renovation of facilities to require that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15. The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility and that require no significant expenditure of funds. State departments, institutions, or agencies shall implement these recommendations. Where

energy management equipment is proposed for State facilities, the maximum interchangeability and compatibility of equipment components shall be required.

The Department of Administration shall develop a comprehensive ~~energy management~~ program to manage energy, water, and other utility use for State government. Each State agency shall develop and implement ~~an energy~~ a management plan that is consistent with the State's comprehensive ~~energy management program.~~program to manage energy, water, and other utility use.

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4."

SECTION 11. G.S. 143-64.15 reads as rewritten:

"**§ 143-64.15. Life-cycle cost analysis.**

(a) A life-cycle cost analysis shall include, but not be limited to, all of the following elements:

(1) The coordination, orientation, and positioning of the facility on its physical ~~site;~~site.

(2) The amount and type of fenestration employed in the ~~facility;~~facility.

(3) Thermal characteristics of materials and the amount of insulation incorporated into the facility ~~design;~~design.

(4) The variable occupancy and operating conditions of the facility, including illumination ~~levels; and~~levels.

(5) Architectural features ~~which~~ that affect ~~energy consumption.~~the consumption of energy, water, and other utilities.

(b) The life-cycle cost analysis performed for any State facility shall, in addition to the requirements set forth in subsection (a) of this section, include, but not be limited to, all of the following:

(1) An energy-consumption analysis of the facility's energy-consuming systems in accordance with the provisions of subsection (g) of this ~~section;~~section.

(2) The initial estimated cost of each energy-consuming system being compared and ~~evaluated;~~evaluated.

(3) The estimated annual operating cost of all utility ~~requirements;~~requirements.

(4) The estimated annual cost of maintaining each energy-consuming ~~system; and~~system.

(5) The average estimated replacement cost for each system expressed in annual terms for the economic life of the facility.

(c) ~~The General Assembly requires each~~Each entity ~~to~~ shall conduct a life-cycle cost analysis pursuant to this section for the construction or the renovation of any State facility or State-assisted facility of 20,000 or more gross square feet. For the replacement of heating, ventilation, and air conditioning equipment in any State facility or State-assisted facility of 20,000 or more gross square feet, the entity shall conduct a life-cycle cost analysis of the replacement equipment pursuant to this section when the replacement is financed under a guaranteed energy savings contract or financed using repair and renovation funds.

(d) The life-cycle cost analysis shall be certified by a registered professional engineer or bear the seal of a North Carolina registered architect, or both. The engineer or architect shall be particularly qualified by training and experience for the type of work involved, but shall not be employed directly or indirectly by a fuel provider, utility company, or group supported by fuel providers or utility funds. Plans and specifications for facilities involving public funds shall be designed in conformance with the provisions of G.S. 133-1.1.

(e) In order to protect the integrity of historic buildings, no provision of this Article shall be interpreted to require the implementation of ~~energy-cost~~ measures to conserve energy, water, or other utility use that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapters 160A or 153A of the General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; nor any historic property owned by the State or assisted by the State.

(f) Each State agency shall use the life-cycle cost analysis over the economic life of the facility in selecting the optimum system or combination of systems to be incorporated into the design of the facility.

(g) The energy-consumption analysis of the operation of energy-consuming systems utilities in a facility shall include, but not be limited ~~to:~~to, all of the following:

(1) The comparison of two or more system ~~alternatives;~~alternatives.

(2) The simulation or engineering evaluation of each system over the entire range of operation of the facility for a year's operating ~~period;~~ ~~and~~period.

(3) The engineering evaluation of the ~~energy~~ consumption of energy, water, and other utilities of component equipment in each system considering the operation of such components at other than full or rated outputs."

SECTION 12. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1271

Committee Substitute Favorable 5/5/05

Short Title: Amend Auctioneer Licensing Laws. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN LAWS PERTAINING TO AUCTIONS AND AUCTIONEERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 85B-1 is amended by adding the following new subdivisions to read:

"**§ 85B-1. Definitions.**

For the purposes of this Chapter the following definitions shall apply:

...

(8) 'Auctioneering', 'conduct of auction', or 'conduct of business' means, in addition to the actual calling of bids, any of the following:

a. Contracting for auction.

b. Accepting consignments of items for sale at auction.

c. Advertising an auction.

d. Offering items for sale at auction.

e. Accepting payment or disbursing monies for items sold at auction.

f. Otherwise soliciting, arranging, sponsoring, or managing an auction or holding oneself out as an auctioneer or auction firm.

(9) 'Consignment' means, unless otherwise modified by written agreement, the act of delivering or transferring goods or real estate in fact or constructively to an auctioneer or the auctioneer's agent in trust for the purpose of resale at auction whereby title does not pass to the buyer until there is an action indicating a sale. For purposes of this section, consignment may also mean a bailment for sale.

(10) 'Designated person' means any person approved by the Board to have the authority to transact business for a licensed auction firm."

SECTION 2. G.S. 85B-2(b) reads as rewritten:

"(b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of subsection (a) of this section shall not apply to any person or entity engaged in the business of organizing, arranging, or conducting auction sales for ~~compensation.~~compensation or any person who or entity that accepts consignments to be sold at auction where the consignor receives any proceeds from the sale."

SECTION 3. G.S. 85B-2 is amended by adding the following new subsection to read:

"(c) The exceptions provided in subdivision (7) of subsection (a) of this section shall not apply to any auctioneer licensed pursuant to this Chapter employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer."

SECTION 4. G.S. 85B-4(d) reads as rewritten:

"(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in ~~Raleigh,~~North Carolina, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but shall take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission, pay all applicable fees, and consent in writing to a criminal history check as required by G.S. 85B-3.2. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivaient of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to

determine whether the applicant possesses the good moral character or other qualifications for licensure."

SECTION 5. G.S. 85B-7 reads as rewritten:

"**§ 85B-7. Conduct of auction; records.**

(a) No licensee shall conduct an auction in this State without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The licensee shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. Copies of all contracts shall be made available to the Commission or its designated agent upon request.

(b) Each licensee shall maintain ~~accounting~~ consignment records and enter in them, upon receipt of goods for auction and before ~~their~~ sale, the name and address of the person who employed the licensee to sell the goods at auction and the name and address of the owner of the goods to be sold. The consignment record shall contain an adequate description of the goods to be sold and shall be sufficient to positively identify each item. ~~The accounting~~Consignment records shall be open for inspection by the Commission or its designated agent at reasonable times.

(c) All licensees shall have their licenses available at each auction they conduct.

(d) Each licensee shall maintain ~~records~~ sales records, which identify the purchaser of all goods sold by name, address, and when possible, telephone number. The sales records shall contain an adequate description of the items sold and must be sufficient to positively identify the owner of the property. Sales records shall be maintained for a period of not less than two years from the date of sale. Sales records shall be open for inspection by the Commission or its designated agent at reasonable times."

SECTION 6. G.S. 85B-7.1(a) reads as rewritten:

"(a) Each licensee who does not disburse all funds to the seller on auction day shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day. The licensee shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located in North Carolina. ~~A licensee who disburses funds on auction day shall prepare a receipt or settlement statement for the disbursed funds that contains the name and address of the person receiving the disbursement and the amount of the disbursement. The receipt or statement shall be signed by the licensee and the person receiving the disbursement.~~At or before the time of all final settlements, the auctioneer shall provide the seller or consignor with a settlement statement, which includes a description of all goods sold, the selling price of the goods sold, the net proceeds due to the seller or consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. All settlement statements shall be signed by the licensee or the licensee's agent and by the person receiving the disbursement."

SECTION 7. G.S. 85B-8(e) reads as rewritten:

"(e) The Commission may investigate complaints and conduct hearings as follows:

(1) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice auctioneer, or auction firm, or any person who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on any licensee, suspend or revoke any license issued under the provisions of this Chapter, or to reprimand or censure any licensee. In all proceedings for the imposition of a civil penalty or the denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the General Statutes including provisions relating to summary suspension shall be applicable. Any person who desires to appeal the denial of an application for any license authorized to be issued under this Chapter shall file a written appeal with the Commission not later than 30 days following notice of denial.

(2) The Commission may, upon its own motion, summarily suspend a license when the health, safety, or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1390

Short Title:	Amend ABC Transportation Limit.	(Public)
Sponsors:	Representatives Gibson and Harrell (Primary Sponsors).	
Referred to:	Alcoholic Beverage Control.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE THE LAW GOVERNING THE COMMERCIAL TRANSPORTATION OF ALCOHOLIC BEVERAGES CONSISTENT WITH THE LAW GOVERNING THE AMOUNTS OF ALCOHOLIC BEVERAGES THAT MAY BE PURCHASED WITHOUT A PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1115(a) reads as rewritten:

"(a) Permit Required. – Unless a person holds a permit which otherwise allows him to transport more than 80 liters of malt beverages other than draft malt beverages in kegs, ~~20~~ 50 liters of unfortified wine, or eight liters of fortified wine or spirituous liquor, or is a retailer authorized to transport alcoholic beverages under G.S. 18B-405, each person transporting alcoholic beverages in excess of those quantities shall have the permit described in this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 630

Committee Substitute Favorable 5/4/05

Third Edition Engrossed 5/12/05

Short Title: Manufactured Homes Escrow Accounts. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOMES ESCROW ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.21A(d) reads as rewritten:

"(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing ~~terms, unless the financing terms are more favorable to the buyer,~~ terms, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired."

SECTION 2. G.S. 143-143.21A(f) reads as rewritten:

"(f) ~~The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars ($2,000).~~The dealer shall place all deposits made by the buyer in an escrow account. After the expiration of the three-day cancellation period in subsection (d) of this section, the dealer may use the deposit funds to complete the steps necessary for site preparation of property owned by the buyer if approved by the buyer. The dealer shall not use deposit funds to develop and complete sites not owned by the buyer. ~~To the extent practicable, the rules shall protect the~~ The deposits held by the dealer in the escrow account required by this subsection shall be free from the claims of the creditors of a

~~dealer that may thereafter be in bankruptcy.~~ dealer. The ~~rules shall further provide for~~ funds held in the escrow account shall be subject to the same requirements of subsection (d) of this section requiring the prompt return of a buyer's deposit if the buyer is entitled to its return."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 630

Committee Substitute Favorable 5/4/05
Third Edition Engrossed 5/12/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H630-CSSU-26 [v.3]

8/11/2005 10:29:31 AM

Short Title: Manufactured Homes Escrow Accounts. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOME DEALERS TO ESTABLISH AND MAINTAIN ESCROW OR TRUST ACCOUNTS FOR BUYER DEPOSITS; TO CLARIFY THE CONTRACT NEGOTIATION PROCESS AND EXTEND THE CANCELLATION PERIOD; TO CHANGE THE MEMBERSHIP OF THE NORTH CAROLINA MANUFACTURED HOUSING BOARD; AND TO PROVIDE BUYERS WITH INFORMATION REGARDING THE PRICE OF MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.8 through G.S. 143-143.25 of Article 9A of Chapter 143 of the General Statutes are redesignated as Part 1 of Article 9A of Chapter 143 of the General Statutes to be entitled "Part 1. Duties, Warranties, Purchase Transaction.". The Revisor of Statutes is authorized to make changes in the newly designated Part 1 that will reflect the results of the recodification.

SECTION 2. G.S. 143-143.9 reads as rewritten:

"**§ 143-143.9. Definitions.**

The following definitions apply in this Article:

(1) ~~Board. – The North Carolina Manufactured Housing Board.~~Bank. – A federally insured financial institution including institutions defined under G.S. 53-1(1), savings and loan associations, credit unions, savings banks and other financial institutions chartered under this or any other state law or chartered under federal law.

(1a) Board. – The North Carolina Manufactured Housing Board.

(2) Buyer. – A person ~~who purchases at retail from a dealer or manufacturer~~ for whom a dealer performs, or is engaged to perform, any services or provides any products including the purchase and setup

of a manufactured home for ~~personal~~ use as a residence or other related use.

(3) Code. – Engineering standards adopted by the Commissioner.

(4) Commissioner. – The Commissioner of Insurance of the State of North Carolina.

(5) Department. – The Department of Insurance of the State of North Carolina.

(5a) Deposit. – Any and all funds received by a dealer from a buyer or someone on behalf of a buyer for the performance of services or the provision of goods.

(5b) Escrow or trust account. – An account with a bank that is designated as an escrow account or as a trust account and that is maintained by a dealer for the deposit of buyers' funds.

(5c) Escrow or trust account funds. – Funds belonging to a person other than the dealer that are received by or placed under the control of the dealer in connection with the performance of services or the provision of products by a dealer for a buyer.

(5d) Funds. – Any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers. The term does not include letters of credit or promissory notes.

~~(5a)~~(5e) License. – A license issued under this Article.

~~(5b)~~(5f) Licensee. – A person who has been issued a license under this Article by the North Carolina Manufactured Housing Board.

(6) Manufactured home. – A structure, transportable in one or more sections, which, in the ~~travelling~~ traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(7) Manufactured home dealer or dealer. – Any person engaged in the business of buying or selling manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

(8) Manufactured home manufacturer or manufacturer. – Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.

(9) Manufactured home salesperson or salesperson. – Any person employed by a manufactured home dealer to sell manufactured homes to buyers. Manufactured home salesperson or salesperson also includes sales managers, lot managers, general managers, or others who manage or supervise salespersons.

(10) Person. – Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

(11) Responsible party. – A manufacturer, dealer, supplier, or set-up contractor.

(12) Setup. – The operations performed at the occupancy site which render a manufactured home fit for habitation.

(13) Set-up contractor. – A person who engages in the business of performing setups for compensation in North Carolina.

(14) Substantial defect. – Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.

(15) Supplier. – The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, ~~panelling,~~paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer."

SECTION 3. G.S. 143-143.10 reads as rewritten:

"**§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.**

(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of ~~nine~~ eleven members as follows:

(1) The Commissioner of Insurance or ~~his~~ the Commissioner's designee.

(2) A manufactured home manufacturer.

(3) A manufactured home dealer.

(4) A representative of the banking and finance ~~business.~~industry.

(5) A representative of the insurance industry.

(6) A manufactured home supplier.

(7) A set-up contractor.

(8) Two representatives of the general public.

(9) A person who is employed with a HUD-approved housing counseling agency in the State.

(10) An accountant.

The Commissioner or ~~his~~ the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance ~~industry~~ industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home ~~supplier~~ supplier, the accountant, and the set up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The ~~member~~ members of the Board ~~representing the general public~~designated in subdivisions (8), (9), and (10) of this subsection shall have no current or previous financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the unexpended funds collected and received during that year. The remaining eighty-five percent (85%) of these funds shall be credited to the General Fund.

(b) In accordance with the provisions of this Article, the Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, salespersons, and set-up contractors.

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salespersons.
(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this Article.
(4) To adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.
(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.
(6) To request that the Department of Justice conduct criminal history checks of applicants for licensure pursuant to G.S. 114-19.13.
(7) To conduct random audits of dealer escrow or trust accounts."

SECTION 4. G.S. 143-143.13(a) reads as rewritten:

"(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) Making a material misstatement in application for license.
(2) Failing to post an adequate corporate surety bond, cash bond or fixed value equivalent.
(3) Engaging in the business of manufactured home manufacturer, dealer, salesperson, or set-up contractor without first obtaining a license from the Board.
(4) Failing to comply with the warranty service obligations and claims procedure established by this Article.
(5) Failing to comply with the set-up requirements established by this Article.
(6) Failing or refusing to account for or to pay over moneys or other valuables belonging to others that have come into licensee's possession arising out of the sale of manufactured homes.
(6a) Failing to comply with the escrow or trust account provisions of Part 2 of this Article.
(7) Using unfair methods of competition or committing unfair or deceptive acts or practices.
(8) Failing to comply with any provision of this Article.
(9) Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board after proper notice or failing to comply with orders of the Board issued pursuant to this Article.
(10) Employing unlicensed salespersons.
(11) Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.
(12) Conviction of any crime listed in G.S. 143-143.10A.

(13) Having had a license revoked, suspended or denied by the Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Article.

(14) Employing or contracting with any person to perform setups who is not licensed by the Board as a set-up contractor."

SECTION 5. G.S. 143-143.21A reads as rewritten:

"**§ 143-143.21A. Purchase agreements; buyer cancellations.**

(a) A purchase agreement for a manufactured home shall include all of the following:

(1) A description of the manufactured home and all accessories included in the purchase.

(2) The purchase price for the home and all accessories.

(3) The amount of deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.

(4) The date the retail purchase agreement is signed.

(5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.

(6) The buyer's signature.

(7) The dealer's signature.

(a1) The dealer shall not commence set-up procedures until after the expiration of the three-day right to cancel period following the finalization of all terms set forth in G.S. 143-143.21A.

(b) The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, the following statement:

"I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS AGREEMENT."

(c) At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer shall give the buyer a copy of the purchase agreement and a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the purchase agreement, be easily detachable, and explain the buyer's right to cancel the purchase and how that right can be exercised.

(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within ~~15~~ seven business days after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, ~~unless the financing terms are more favorable to the buyer,~~ the buyer shall be given another three day cancellation period. The dealer shall not commence setup procedures until after the final three day cancellation period has expired.

(e) If the buyer cancels the purchase after the three-day cancellation period, but before the sale is completed, and if:

(1) The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or

(2) The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's deposit or other payment received from the buyer.

~~(f) The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars ($2,000). To the extent practicable, the rules shall protect the deposits from the claims of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further provide for the prompt return of a buyer's deposit if the buyer is entitled to its return.~~"

SECTION 6. Article 9A of Chapter 143 of the General Statutes is amended by adding the following new Part to read:

"Part 2. Buyer Deposit, Escrow or Trust Accounts.

"**§ 143-143.50. Escrow or trust account required.**

(a) Dealers shall maintain buyers' deposits in an escrow or trust account with a bank. A dealer shall not commingle any other funds with buyers' deposits in the escrow or trust account.

(b) Dealers shall notify the Board in writing when the escrow or trust account is established. The notification shall include the name and number of the account and the name and location of the bank holding the account.

(c) All buyer funds shall be placed in the escrow or trust account no later than the close of the third banking business day after receipt.

(d) Dealers shall provide buyers with a receipt for all buyer deposits received by the dealer. The receipt shall include the amount of the buyer deposit, the date the deposit was provided to the dealer, and the name and address of the bank where the buyer's funds will be deposited.

"§ 143-143.51. Use of escrow or trust funds; penalty for violations.

(a) Buyer funds in the dealer's escrow or trust account shall be held for the benefit of the buyer and may only be used for purposes authorized under the contractual obligations of the dealer to the buyer. No buyer funds in the dealer's escrow or trust account may be used by the dealer until after all the terms set forth in G.S. 143-143.21A are finalized and after the three-day right of cancellation period as set forth in G.S. 143-143.21A has expired. The dealer may use buyer funds to complete the steps necessary for site preparation of property, when approved in writing in advance by the buyer. Buyer funds in the dealer's escrow or trust account shall be promptly returned to the buyers when the buyer is entitled to return of the funds in accordance with G.S. 143-143.21A.

(b) Notwithstanding any other provision of law and in addition to any other sanction the Board may impose under this Article, if the Board finds that a dealer has used a buyer's funds for a purpose that is not authorized under subsection (a) of this section or if the Board finds that a dealer has failed to place deposits in the dealer's escrow or trust account, the Board may fine the dealer or order restitution to the buyer in an amount up to the amount that the dealer misappropriated or failed to place in the account.

"§ 143-143.52. Minimum requirements for dealer records for escrow or trust accounts at banks.

The records required for escrow or trust accounts maintained at a bank shall consist of the following and be maintained for a period of five years from the date of purchase:

(1) All bank receipts or deposit slips listing the source and date of receipt of all funds deposited in the account and the name of the buyer to whom the funds belong.

(2) All cancelled checks or other instruments drawn on the account, or printed digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement.

(3) All instructions or authorizations to transfer, disburse, or withdraw funds from the escrow or trust account.

(4) All bank statements and other documents received from the bank with respect to the escrow or trust account, including notices of return or dishonor of any instrument drawn on the account against insufficient funds.

(5) A ledger containing a record of receipts and disbursements for each buyer from whom and for whom funds are received and showing the current balance of funds held in the escrow or trust account for each buyer.

"§ 143-143.53. Accountings for escrow or trust funds.

Upon the request of the buyer, the dealer shall provide to the buyer a written accounting of the receipts and disbursements of all escrow or trust funds upon the complete disbursement of the escrow or trust accounts.

"§ 143-143.54. Audits and record inspection.

All financial records required by this Part shall be subject to audit for cause and to random audit at the discretion of and by the Board, the Commissioner, or the Attorney General. The Board may inspect these records periodically, without prior notice and may also inspect these records whenever the Board determines that the records are pertinent to an investigation of any complaint against a licensee. The dealer shall provide written authorization to the bank that holds the escrow or trust account to release any and all requested information relative to the account to the parties authorized under this section to inspect those records."

SECTION 7. Sections 1, 2, 3, 4 and 8 of this act become effective April 1, 2006. The remainder of this act becomes effective July 1, 2006. Appointment of members to the North Carolina Manufactured Housing Board under Section 3 of this act for any positions existing prior to the effective date of Section 3 shall be effective upon the completion of the existing term, terminating on or after the effective date of this act. Appointment of new members to the North Carolina Manufactured Housing Board under Section 3 of this act shall be effective on October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **2**

HOUSE BILL 1468
Committee Substitute Favorable 5/18/05

Short Title: Telecommunication Service Providers. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO DETERMINE CERTAIN TELECOMMUNICATION SERVICE PROVIDERS TO BE THE UNIVERSAL SERVICE PROVIDER IN CERTAIN SUBDIVISIONS AND AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

~~Each~~ Except as provided in subsections (f4) and (f5) of this section, each local exchange company shall be the universal service provider (carrier of last resort) in the area in which it is certificated to operate on July 1, ~~1995, until otherwise determined by the Commission.~~1995. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. At a time determined by the Commission to be in the public interest, the Commission shall conduct an investigation for the purpose of adopting final rules concerning the provision of universal ~~services, the person that should be the universal service provider,~~services, and whether universal service should be funded through interconnection rates or through some other funding mechanism.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates."

SECTION 2. G.S. 62-110 is amended by adding two new subsections to read:

"(f4) When any telecommunication service provider enters into an agreement to provide local exchange service for a subdivision or other area where access to right-of-way for the provision of local exchange service by other telecommunication service providers has not been granted by the property owner, the telecommunication service provider shall be the universal service provider (carrier of last resort) in the subdivision or other area. If the local exchange company for the franchise area or territory in which the subdivision or other area is located is not a party to the agreement, the local exchange company shall be relieved of any universal service provider obligation for that subdivision or other area. In that case, the local exchange company and all other authorized telecommunication service providers shall retain the option, but not the obligation, to serve customers in such a subdivision or other area. Upon notification by the local exchange company that it no longer wishes to be the universal service provider for a subdivision or other area as provided in this section, the Commission shall take necessary steps to reflect that the local exchange company is no longer the universal service provider for the subdivision or other area identified to the Commission. For a local exchange company that qualifies as a rural local exchange company under the Federal Telecommunications Act of 1996, the Commission, or other appropriate State agency, after notification from the rural local exchange company, shall take necessary steps to reflect that the rural local exchange company is no longer the universal service provider for the subdivision or other area identified to the Commission and shall amend the service area or study area of the rural local exchange company and notify the Federal Communications Commission of such amendment.

(f5) If the Commission finds that the telecommunications service provider that entered into the agreement is no longer willing or able to fulfill its obligations as universal service provider for the subdivision or other area, the Commission shall redesignate the local exchange company for the franchise area or territory in which the subdivision or other area is located to be the universal service provider for the area. The costs reasonably incurred by the redesignated universal service provider in extending its facilities into the subdivision or other area shall, subject to Commission approval, be permitted in the form of a surcharge to be spread equitably among all of its customers without having to file a general rate case, and if the designated universal service provider is subject to price regulation or alternative regulation under G.S. 62-133.5, it may treat these costs as exogenous to such form of regulation and it may adjust its rates so as to recover these costs from its customers whose rates are subject to regulation."

SECTION 3. This act is effective when it becomes law.

SENATE
COMMITTEE SUBSTITUTE

AUG 11 ?

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

ADOPTED 3

HOUSE BILL 1468
Committee Substitute Favorable 5/18/05
~~PROPOSED SENATE COMMITTEE SUBSTITUTE H1468-PCS30372-RL-43~~
Senate Commerce Committee Substitute Adopted 8/11/05

Short Title: Telecommunication Service Providers. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO DETERMINE CERTAIN TELECOMMUNICATION SERVICE PROVIDERS TO BE THE UNIVERSAL SERVICE PROVIDER IN CERTAIN SUBDIVISIONS AND AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the

prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

~~Each~~ Except as provided in subsections (f4) and (f5) of this section, each local exchange company shall be the universal service provider (carrier of last resort) in the area in which it is certificated to operate on July 1, ~~1995, until otherwise determined by the Commission.~~1995. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. At a time determined by the Commission to be in the public interest, the Commission shall conduct an investigation for the purpose of adopting final rules concerning the provision of universal ~~services, the person that should be the universal service provider,~~services, and whether universal service should be funded through interconnection rates or through some other funding ~~mechanism.~~mechanism, and, consistent with the provisions of subsections (f4) and (f5) of this section, the person that should be the universal service provider.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates."

SECTION 2. G.S. 62-110 is amended by adding three new subsections to read:

"(f4) When any telecommunications service provider enters into an agreement to provide local exchange service for a subdivision or other area where access to right-of-way for the provision of local exchange service by other telecommunications service providers has not been granted coincident with any other grant of access by the property owner, the telecommunications service provider entering into the agreement shall be the universal service provider in the subdivision or other area. If the local exchange company for the franchise area or territory in which the subdivision or other area is located is not a party to the agreement, the local exchange company shall be relieved of any universal service provider obligation for that subdivision or other area. In that case, the local exchange company and all other telecommunications service providers shall retain the option, but not the obligation, to serve customers in the subdivision or other area. The local exchange company shall provide written notification to the appropriate State agency that it is no longer the universal service provider for the subdivision or other area. The appropriate State agency shall retain the right to redesignate a local exchange company or telecommunications service provider as the universal service provider in accordance with the provisions of subsection (f5) of this section.

(f5) If the appropriate State agency finds, upon hearing, that the telecommunications service provider that entered into the agreement, or its successor in interest, is no longer willing or no longer able to provide adequate services to the subdivision or other area, the appropriate State agency may redesignate the local exchange company for the franchise area or territory in which the subdivision or other area is located, or another telecommunications service provider, to be the universal service provider for the subdivision or other area. If the redesignated local exchange company is subject to price regulation or other alternative regulation under G.S. 62-133.5, it may treat the costs incurred in extending its facilities into the subdivision or other area as exogenous to that form of regulation and may, subject to providing written notice to the Commission, adjust its rates to recover these costs on an equitable basis from its customers whose rates are subject to regulation under G.S. 62-133.5. Any such action shall be subject to review by the Commission in a complaint proceeding initiated by any interested party pursuant to G.S. 62-73. If the redesignated local exchange company is not subject to price regulation or other alternative regulation under G.S. 62-133.5, it may recover the costs incurred in extending its facilities into the subdivision or other area in the form of a surcharge, subject to Commission approval, spread equitably among all of its customers in a proceeding under G.S. 62-136(a), without having to file a general rate case proceeding. During the period that a telecommunications service provider is serving as a universal service provider and prior to the redesignation of a local exchange company as the universal service provider as provided for herein, for the purposes of the appropriate

State agency's periodic certification to the Federal Communications Commission in matters regarding eligible telecommunications carrier status, a local company's status shall not be deemed to affect its eligibility to be an eligible telecommunications carrier, and the appropriate State agency shall so certify.

(f6) For purposes of subsections (f4) and (f5) of this section, the following definitions are applicable:

(1) "Appropriate State agency" means the Commission for purposes of any subdivision or other area within the franchise area of a local exchange company, and the Rural Electrification Authority for the purposes of any subdivision or other area within the franchise area or territory of a telephone membership corporation.

(2) "Local exchange company" means a local exchange company subject to price regulation, or other alternative regulation or rate base regulation by the Commission or a telephone membership corporation organized under G.S. 117-30.

(3) "Telecommunications service provider" means a competing local provider, or any other person providing local exchange service by means of voice-over-Internet protocol, wireless, power line, satellite, or other nontraditional means, whether or not regulated by the Commission, but the term shall not include local exchange companies or telephone membership corporations."

SECTION 3. This act is effective when it becomes law. Section 2 of this act applies to agreements entered into before, on, or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1518

Committee Substitute Favorable 5/31/05

Short Title: ABC Licensees to Recycle Beverage Containers. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HOLDERS OF CERTAIN ABC PERMITS TO RECYCLE ALL RECYCLABLE CONTAINERS OF ALL BEVERAGES SOLD AT RETAIL ON THE PREMISES AND TO PROHIBIT THE DISPOSAL OF THOSE CONTAINERS IN LANDFILLS OR BY INCINERATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1006.1. Additional requirement for certain permittees to recycle beverage containers.**

Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall separate, store, and provide for the collection for recycling of all recyclable beverage containers of all beverages sold at retail on the premises. A permittee has satisfied the requirements of this subsection if it implements a recycling program that meets the minimum standards of the model recycling program developed by the Commission pursuant to G.S. 130A-309.14(m)."

SECTION 2. G.S. 130A-309.14 is amended by adding a new subsection to read:

"(m) The Alcoholic Beverage Control Commission, with the assistance of the Department, shall develop a model recycling program for holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits under G.S. 18B-1001 that are required to recycle beverage containers under G.S. 18B-1006.1. The model program shall provide for the separation, storage, and collection for recycling of all beverage containers that are required to be recycled under G.S. 18B-1006.1 and shall provide alternatives that reflect variations in local circumstances across the State. The Alcoholic Beverage Control Commission may adopt rules to comply with this section."

SECTION 3. Subsections (f) and (f1) of G.S. 130A-309.10 read as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.

(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods.

(5) Antifreeze (ethylene glycol).

(6) Aluminum cans.

(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). ~~The prohibition against landfilling~~ The prohibition of the disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(8) Lead-acid batteries, as provided in G.S. 130A-309.70.

(9) Beverage containers that are required to be recycled under G.S. 18B-1006.1.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

(1) Antifreeze (ethylene glycol) used solely in motor vehicles.

(2) Aluminum cans.

(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

(4) White goods.

(5) Lead-acid batteries, as provided in G.S. 130A-309.70.

(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1."

SECTION 4. This act becomes effective January 1, 2007.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1518 DATE _____

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
) Ford
Sen.)

1 moves to amend the bill on page 2, line 30

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 deleting "2007." and substituting

5 "2008."

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1389

Short Title:	Clarify Wineries Wholesale License.	(Public)
Sponsors:	Representatives Gibson and Harrell (Primary Sponsors).	
Referred to:	Alcoholic Beverage Control.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING WINE DISTRIBUTION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1200 reads as rewritten:

"**§ 18B-1200. Construction; findings and ~~purpose.~~purpose; exceptions.**

(a) This Article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of the Article are:

(1) To promote the compelling interest of the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;

(2) To protect wine wholesalers against unfair treatment by wineries;

(3) To provide wine wholesalers with rights and remedies in addition to those existing by contract or common law; and

(4) To govern all wine wholesalerships, including any renewals or amendments, to the full extent consistent with the Constitution of this State and the United States.

(c) The effect of this Article may not be waived or varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to the extent of that waiver or variance.

(d) A North Carolina winery holding a valid wine wholesaler permit issued pursuant to G.S. 18B-1101(7) and G.S. 18B-1107, when acting as its own master wholesaler, shall not be subject to the provisions of G.S. 18B-1204, 18B-1205, and 18B-1207."

SECTION 2. This act is effective when it becomes law. This act shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of this act.

VISITOR REGISTRATION SHEET

Commerce Committee — August 11, 2005
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN GOODMAN	ALLEY ASSOCIATES
[illegible]	NCRA
Stacy Flannery	NCHCFA
HUGH TILSON	NCCPA
Chris Kellum	Nelson Mullins
DAVID BARNES	Poyner Spruill
Molly Ryan	NCSBA
Salvador Allende	Dictator & US
Rachel O'Brien	PFFPNC
ANN LORE	OUAS
FRANK W. FOLGER	NCDOT
April Culver	Smith
Tim BRADLEY	NCDOT
Colleen Kochanek	HYMH
Ellis Caldwell	NC Sheriffs' Assn.
[illegible]	LBA
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

SENATE COMMERCE COMMITTEE
Thursday, August 11, 2005, 3:00 PM
1027 LB

AGENDA

Welcome and Opening Remarks

Bill

HB 99	Forestry Special Plate Background	Representative Gibson

Other Business: SB 984 Workers' Compensation Act.
Postpone Indefinitely

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, August 11, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 3:00 p.m. on August 11, 2005, in Room 1027 of the Legislative Building. Eighteen members of the Committee were present. Senator R. C. Soles, Jr. presided.

Senator Hoyle moved the adoption of a proposed Senate Committee Substitute bill for HB 99, Forestry Special Plate Background. The motion carried. Senator Soles further recognized Senator Hoyle to explain the bill. The following individuals spoke to the bill: Paul Pulley and Dick Taylor, North Carolina Academy of Trial Lawyers, and Rolf Blizzard, North Carolina Citizens for Business and Industry. Senator Phil Berger moved a favorable report of the proposed Senate Committee Substitute bill. The motion carried.

Senator Soles stated that without objection, SB 984, Amend Worker's Compensation Act, be postponed indefinitely.

The meeting adjourned at 3:45 p.m.

Senator R. C. Soles, Jr., Presiding

Joan Leatherman, Committee Assistant
Mona Fitzgerald, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Friday, August 12, 2005

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL WITH UNENGROSSED AMENDMENT

H.B. **99** Forestry Special Plate Background.

Draft Number:	PCS70557
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Corrected Commerce Committee Report

HOUSE BILL 99

Short Title:	Forestry Special Plate Background.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Transportation.	

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO PRODUCE "FIRST IN FORESTRY" PLATES WITH A SPECIAL BACKGROUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.

(8) First in Forestry."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 99
PROPOSED SENATE COMMITTEE SUBSTITUTE H99-PCS70557-RG-36

Short Title: Amend Workers' Comp. Act. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT AND TO CREATE THE STUDY COMMITTEE ON WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is established the Study Committee on Workers' Compensation Benefits. The Committee shall study disability benefits available under the Workers' Compensation Act, including the following:

(1) The appropriate coverage and benefit levels, including the level of scheduled payments under G.S. 97-31, the appropriateness of cost-of-living adjustments, and a comparison of workers' compensation benefits in other states.

(2) How the workers' compensation system functions with other disability benefits, including social security and private disability.

(3) Employment issues and their relationship to the current workers' compensation system.

(4) The appropriate manner for compensation related to exposure to asbestos or silica.

(5) The manner and duration of medical benefits.

(6) Any other issues the Committee deems relevant under the workers' compensation system.

SECTION 1.(b) The Study Committee on Workers' Compensation Benefits shall consist of 12 members, appointed as follows:

(1) Six appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) Six appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Vacancies in membership shall be filled by the original appointing authority. The Committee, while in the discharge of its official duties, may exercise all powers

provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 1.(c) Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Committee, and the expenses relating to clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 1.(d) The Committee shall report to the 2006 Regular Session of the 2005 General Assembly upon its convening and shall make its final report to the 2007 General Assembly upon its convening. Progress and final reports of the Commission may include recommended legislation. The Committee shall terminate upon the convening of the 2007 General Assembly.

SECTION 1.(e) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Committee established by this act.

SECTION 2. G.S. 97-12 reads as rewritten:

"**§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.**

No compensation shall be payable if the injury or death to the employee was proximately caused by:

(1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or

(2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or

(3) His willful intention to injure or kill himself or another.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury compensation shall be reduced ten percent (10%).

"Intoxication" and "under the influence" shall mean that the employee shall have consumed a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to lose the normal control of his or her bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties at the time of the injury.

A result consistent with "intoxication" or being "under the influence" from a blood or other medical test conducted in a manner generally acceptable to the scientific

community and consistent with applicable State and federal law, if any, shall create a rebuttable presumption of impairment from the use of alcohol or a controlled substance."

SECTION 3. G.S. 97-17(b) reads as rewritten:

"(b) The Commission shall not approve a settlement agreement under this section, unless all of the following conditions are satisfied:

(1) The settlement agreement is deemed by the Commission to be fair and just, and that the interests of all of the parties and of any person, including a health benefit plan that paid medical expenses of the employee have been considered.

(2) The settlement agreement contains a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes, and a list of medical expenses, if any, that will be paid by the employer under the settlement agreement.

(3) The settlement agreement contains a finding that the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses.

It is not necessary, however, to satisfy the condition in subdivision (2) of this subsection when in the settlement agreement the employer agrees to pay all medical expenses of the employee related to the injury to the date of the settlement agreement."

SECTION 4. G.S. 97-18 reads as rewritten:

"**§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.**

(a) Compensation under this Article shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided.

(b) When the employer admits the employee's right to compensation, the first installment of compensation payable by the employer shall become due on the fourteenth day after the employer has written or actual notice of the injury or death, on which date all compensation then due shall be paid. Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced.

(c) If the employer denies the employee's right to compensation, the employer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, or within such reasonable additional time as the Commission may allow, and advise the employee in writing of its refusal to pay

compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may deny the claim in good faith or initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

(e) The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due 10 days from the day following expiration of the time for appeal from the award or judgment or the day after notice waiving the right of appeal by all parties has been received by the Commission, whichever is sooner. Thereafter compensation shall be paid in installments weekly, except where the Commission determines that payment in installments shall be made monthly or in some other manner.

(f) The employer's or insurer's grounds for contesting the employee's claim or its liability therefor as specified in the notice suspending compensation under subsection (d) of this section are the only bases for the employer's or insurer's defense on the issue

of compensability in a subsequent proceeding, unless the defense is based on newly discovered material evidence that could not reasonably have been discovered prior to the notice suspending compensation.

(g) If any installment of compensation is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(h) Within 16 days after final payment of compensation has been made, the employer shall send to the Commission and the employee a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer a civil penalty in the amount of twenty-five dollars ($25.00). The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) If any bill for services rendered under G.S. 97-25 by any provider of health care is not paid within 60 days after it has been approved by the Commission and returned to the responsible party, or within 60 days after it was properly submitted, in accordance with the provisions of this Article, to an insurer or managed care organization responsible for direct reimbursement pursuant to G.S. 97-26(g), there shall be added to such unpaid bill an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such medical bill, unless such late payment is excused by the Commission.

(j) The employer or insurer shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in subsections (b), (c), or (d) of this section. When an employee files a claim for compensation with the Commission, the Commission may order reasonable sanctions against an employer or insurer which does not, within 30 days following notice from the Commission of the filing of a claim, or within such reasonable additional time as the Commission may allow, do one of the following:

(1) Notify the Commission and the employee in writing that it is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under subsection (b) of this section.

(2) Notify the Commission and the employee that it denies the employee's right to compensation consistent with subsection (c) of this section.

(3) Initiate payments without prejudice and without liability and satisfy the requirements of subsection (d) of this section.

For purposes of this subsection, reasonable sanctions shall not prohibit the employer or insurer from contesting the compensability of or its liability for the claim."

SECTION 5. G.S. 97-26 is amended by adding a new subsection to read:

"(i) Resolution of Dispute. – The employee or health care provider may apply to the Commission by motion or for a hearing to resolve any dispute regarding the payment of charges for medical compensation in accordance with this Article."

SECTION 6.1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"**§ 97-25.6. Reasonable access to medical information.**

Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Article may obtain records of the treatment without the express authorization of the employee. In addition, with written notice to the employee, the employer may obtain directly from a medical provider medical records of evaluation or treatment restricted to a current injury or current condition for which an employee is claiming compensation from that employer under this Article.

Any medical records or reports, restricted to conditions related to the injury or illness for which the employee is seeking compensation, in the possession of the employee shall be furnished by the employee to the employer when requested in writing by the employer.

An employer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee's condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of the employee's condition to the employment, the restrictions from the condition, the kind of work for which the employee may be eligible, the anticipated time the employee will be restricted, and the permanent impairment, if any, as a result of the condition. When these questions are used, a copy of the written communication shall be provided to the employee at the same time and by the same means as the communication is provided to the provider.

Other forms of communication with a medical provider may be authorized by (i) a valid written authorization voluntarily given and signed by the employee, (ii) by agreement of the parties, or (iii) by order of the Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section or through other provisions for discovery authorized by the Commission's rules. In adopting rules or authorizing employer communications with medical providers, the Commission shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.

Upon motion by an employee or provider from whom medical records or reports are sought or upon its own motion, for good cause shown, the Commission may make any

order which justice requires to protect an employee or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense."

SECTION 6.2. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. ~~Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee.~~ In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

SECTION 7. G.S. 97-82(a) reads as rewritten:

"(a) If the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Article, they may enter into a memorandum of the agreement in the form prescribed by the Commission.

An agreement, however, shall be incorporated into a memorandum of agreement in regard to compensation: (i) for loss or permanent injury, disfigurement, or permanent and total disability under G.S. 97-31, (ii) for death from a compensable injury or occupational disease under G.S. 97-38, or (iii) when compensation under this Article is paid or payable to an employee who is incompetent or under 18 years of age.

The memorandum of agreement, accompanied by ~~a full and complete medical report,~~ the material medical and vocational records, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents."

SECTION 8. G.S. 97-88.2 is amended by adding a new subsection to read:

"(a1) When a person is convicted under subsection (a) of this section, the Commission may enter such orders as necessary to ensure that the person convicted does not benefit from the unlawful conduct."

SECTION 9. It is the intent of the General Assembly to provide the North Carolina Industrial Commission with adequate resources by establishing new positions to assist the Commission in performing its important task.

SECTION 10. Sections 2, 4, and 8 of this act become effective October 1, 2005. Sections 3, 5, 6, 6.1, 6.2, and 7 of this act are effective when this act becomes law and apply to claims pending and filed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 984

Short Title:	Amend Workers' Compensation Act.	(Public)
Sponsors:	Senators Hoyle; Albertson, Apodaca, Brown, Dalton, East, Garwood, Goodall, Graham, Hagan, Hartsell, Hunt, Jenkins, Presnell, Rand, Soles, Stevens, Swindell, Tillman, and Weinstein.	
Referred to:	Commerce.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-12 reads as rewritten:

"**§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.**

(a) No compensation shall be payable if the injury or death to the employee was proximately caused by:

(1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or

(2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or

(3) His willful intention to injure or kill himself or another.

(b) A positive drug or alcohol test result shall be a conclusive presumption of impairment resulting from the use of drugs or alcohol. No compensation shall be allowed when the employee refuses to submit to or cooperate with a blood or other applicable medical test after the accident, if the employee had previously been warned in writing by the employer that such refusal would forfeit the employee's right to recover benefits under this Article.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury

compensation shall be reduced ten percent (10%). ~~The burden of proof shall be upon him who claims an exemption or forfeiture under this section.~~"

SECTION 2. G.S. 97-18(b) reads as rewritten:

"(b) When the employer admits the employee's right to compensation, the first installment of compensation ~~payable~~ by the employer shall ~~become due on the fourteenth day after the employer has written or actual notice of the injury or death, on which date all compensation then due shall be paid.~~ be paid within 14 days after the employer or carrier completes its investigation of the employee's claims. The employer shall make a decision whether to admit or deny an employee's right to compensation no more than 90 days after the employer has written notice of the employee's filing of a claim on an approved Commission Form 18, Form 18B, or Form 33. In the event the employer no longer exists as a legal entity, any carrier insuring the employer at the time of the injury or last injurious exposure shall have 90 days from the date of receipt of the notice of claim from the Industrial Commission to accept the claim or deny the employee's right to compensation. The Commission may extend the deadline for admitting or denying a claim at its discretion. Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced."

SECTION 3. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section:

"**§ 97-25.6. Reasonable access to medical information.**

(a) It is the policy of the State that all parties have reasonable access to medical information to facilitate the administration of this Article. An employee who reports an injury or illness to the employer that the employee claims is work-related waives any physician-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee seeks compensation. Any medical records, reports, and information for an employee relevant to the injury or illness for which the employee is seeking compensation must be furnished when requested by the employer, the insurance carrier, an authorized qualified rehabilitation provider, or the attorney for the employer or carrier, along with any necessary discussion of the medical condition, when the medical records, reports, information, and discussion are restricted to conditions relating to the injury.

(b) Release of medical information under subsection (a) of this section by the health care provider or other physician does not require the employee's authorization. If medical information of an employee under subsection (a) of this section is sought from health care providers who are not subject to the jurisdiction of State courts, the injured

employee shall sign an authorization allowing the employer or carrier to obtain the medical information. Any such release of information may be held before or after the filing of a claim for compensation under this Article without the knowledge, consent, or presence of any other party.

(c) A health care provider who willfully refuses to provide medical records, reports, or information or to discuss the medical condition of the injured employee under this section, after a reasonable request is made for such information, shall be subject to sanctions determined by the Commission.

(d) The Commission may adopt rules to implement this section."

SECTION 4. G.S. 97-29 reads as rewritten:

"**§ 97-29. Compensation rates for total incapacity.**

Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars ($30.00) per week. With respect to injuries that occur when the employee is age 60 or younger, the period covered by the compensation shall not, subject to G.S. 97-31(17) only, extend beyond the date that the employee reaches age 65, and in no case shall the period covered exceed 500 weeks from the date of the injury. With respect to injuries that occur after the employee reaches age 60, the period covered by compensation shall not exceed 260 weeks from the date of the injury.

In cases of total and permanent compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State Defense Militia shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars ($30.00) a week as fixed herein.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars ($2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on

and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided."

SECTION 5. G.S 97-30 reads as rewritten:

"**§ 97-30. Partial incapacity.**

Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such disability, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29 a ~~week, and in no case shall the period covered by such compensation be greater than 300 weeks from the date of injury.~~ week. With respect to injuries that occur when the employee is age 60 or younger, the period covered by the compensation shall not extend beyond the date that the employee reaches age 65, or shall not exceed 500 weeks from the date of the injury, whichever occurs sooner. With respect to injuries that occur after the employee reaches age 60, the period covered by compensation shall not exceed 260 weeks from the date of the injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability. An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article."

SECTION 6. G.S. 97-31(24) reads as rewritten:

"(24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed twenty thousand dollars ($20,000). This subdivision does not apply to the loss or permanent injury to the lungs and parietal and visceral pleura surrounding the lungs resulting from exposure to asbestos or silica."

SECTION 7. G.S. 97-31 is amended by adding a new subdivision:

"(25) In case of the loss of, or permanent injury to the lung, which includes the parietal and visceral pleura surrounding the lung, resulting from exposure to asbestos or silica for which no compensation has been paid or is payable for partial or total disability, compensation shall be payable in an amount not to exceed twenty thousand dollars ($20,000) and shall be in lieu of compensation under any other subdivision of this section. Compensation under this subdivision is subject to the following limitations:

a. Compensation awarded shall be for the loss of use attributable to the disease alone. If the employee has smoked within 10

years of the employee's date of diagnosis of the loss of, or permanent injury to, the lung, which includes the parietal and visceral pleura surrounding the lung, resulting from exposure to asbestos or silica, the compensation awarded pursuant to sub-subdivision b. of this subdivision shall be reduced by one-half. For purposes of this sub-subdivision, "smoked" means the personal use of cigarettes or cigars at a level of at least one-fourth pack a day history at any time within the 10 years prior to the diagnosis.

b. Compensation shall be in the proportion that the partial loss bears to a total loss of use of the lung, which includes the parietal and visceral pleura surrounding the lung, as measured by the following schedule and diagnosed by a competent medical authority:

1. ILO Grade 1/1 or greater with or without pleural changes with zero percent (0%) AMA impairment: zero percent (0%) to not more than four percent (4%) loss of, or permanent injury to, the lung, which includes the parietal and visceral pleura.
2. ILO Grade 1/1 or greater with or without pleural changes with a Class II AMA impairment: five percent (5%) to not more than twenty-four percent (24%) loss of, or permanent injury to, the lung, which includes the parietal and visceral pleura.
3. ILO Grade 1/1 or greater with or without pleural changes with a Class III AMA impairment: twenty-five percent (25%) to not more than forty-nine percent (49%) loss of, or permanent injury to, the lung, which includes the parietal and visceral pleura.
4. ILO Grade 1/1 or greater with or without pleural changes with a Class IV AMA impairment: fifty percent (50%) to one hundred percent (100%) loss of, or permanent injury to, the lung, which includes the parietal and visceral pleura.

For purposes of this sub-subdivision, "competent medical authority" means a medical doctor who is board-certified as an internist, pulmonary specialist, oncologist, pathologist, or occupational medicine specialist."

SECTION 8. G.S. 97-32 reads as rewritten:

"**§ 97-32. Refusal of injured employee to accept suitable employment as suspending compensation.**

If an injured employee refuses employment ~~procured for him suitable to~~ within his ~~capacity~~ physical limitations, he shall not be entitled to any compensation ~~at any time~~

~~during the continuance~~ as a result of such ~~refusal, unless in the opinion of the Industrial Commission such refusal was justified.~~refusal."

SECTION 9. G.S. 97-61.1 through G.S. 97-63 are repealed.

SECTION 10. It is the intent of the General Assembly to provide the North Carolina Industrial Commission with adequate resources by establishing new positions to assist the Commission in performing its important task.

SECTION 11. This act becomes effective October 1, 2005, and applies to injuries that occur on or after that date.

SENATE COMMERCE COMMITTEE
Friday, August 12, 2005, 11:00 AM
1027 LB

REVISED AGENDA

Welcome and Opening Remarks

Bills Eligible for Consideration:

HB 237	Revise Mortgage Lending Act	Representative Coates
HB 818	Worker's Comp./Driver's Status	Representative Sutton
HB 1025	Wine Making on Premises Permit	Representative Lubke
HB 1411	Update Consumer Credit Sales Cap	Representative Lubke

Other Business:

SB	84	Amend Workers' Compensation Act Motion to Postpone Indefinitely	Senator Hoyle
HB	669	Overweight/Oversize Vehicle Changes Motion to Reconsider the Senate Committee Substitute Adopted on August 10, 2005	Representative Cole

Adjournment

SENATE COMMERCE COMMITTEE
Friday, August 12, 2005
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on August 12, 2005, in Room 1027 of the Legislative Building. Sixteen members of the Committee were present. Senator R. C. Soles, Jr. presided.

Senator Soles said the first order of business would be to revisit HCS 669 Oversize/Overweight Vehicle Changes. The Committee adopted a Senate Committee Substitute, which was given a favorable report at the August 10, 2005 meeting. He then recognized Senator Rand for a motion. Senator Rand, having voting with the prevailing side, moved that the vote by which the Senate Committee Substitute bill received a favorable report be reconsidered. The motion carried. Senator Rand moved for adoption of a proposed Senate Committee Substitute No. 2 for HCS 669, Oversize/Overweight Vehicle Changes. The motion carried. Senator Rand offered Amendment No. 1. Senator Rand moved the Amendment be adopted, and the motion carried. . Senator Rand moved that the Senate Committee Substitute No. 2 for HCS 669, as amended be adopted and engrossed. The motion carried.

Senator Soles stated that the Senate Committee Substitute for, HB 99 Amend Workers' Comp. Act, which had been adopted and given a favorable report by the Committee on August 11, 2005, but not yet reported in, had several corrections that needed to be made by the Committee prior to reporting the bill to the full Senate. Senator Soles recognized Senator Hoyle for a motion. Senator Hoyle, having voting with the prevailing side, moved that the vote by which the Senate Committee Substitute bill received a favorable report be reconsidered. The motion carried. Without objection, Senator Soles stated that the Senate Committee Substitute bill for H.B. 99 was now before the Committee for consideration. Senator Hoyle sent forward an amendment and moved its adoption. The motion carried. Senator Hoyle moved that the Senate Committee Substitute bill for H.B. 99, as amended, be given a favorable report. The motion carried.

Senator Soles recognized Representative Luebke to explain HB 1025, Winemaking on Premises Permit. Senator Hoyle moved for a favorable report. The motion carried. Senator Soles stated that the bill would be re-referred to the Finance Committee.

Senator Soles recognized Representative Luebke to explain HCS 1411, Update Consumer Credit Sales Cap. Senator Hoyle moved for a favorable report. The motion carried.

Senator Soles recognized Senator Dalton to explain HCS 237, Revise Mortgage Lending Act. Senator Dalton moved for a favorable report. The motion carried.

The meeting adjourned at 11:30 a.m.

Senator R. C. Soles, Jr., Presiding

Joan Leatherman, Committee Assistant
Mona Fitzgerald, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Friday ~~Saturday,~~ August ~~13~~ 12, 2005

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

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) 669 Oversize/Overweight Vehicle Changes.-AB

Draft Number:	PCS50493
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Janet Pruitt

AUG 13 2005

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Friday, August 12, 2005

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

FAVORABLE

H.B.(CS #2) **237**	Revise Mortgage Lending Act.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B. **1025**	Winemaking on Premises Permit.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #1) **1411**	Update Consumer Credit Sales Cap.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

4

HOUSE BILL 669*

Committee Substitute Favorable 4/28/05
Third Edition Engrossed 5/5/05
Senate Commerce Committee Substitute Adopted 8/10/05

Short Title: Oversize/Overweight Vehicle Changes.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW CONCERNING OVERSIZE AND OVERWEIGHT VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-96 reads as rewritten:

"**§ 20-96. Detaining property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until fines or penalties and taxes are collected.**

(a) Authority to Detain Vehicles. – A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

(5) Any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid.

(6) A property-hauling vehicle operating in violation of G.S. 20-119.

The officer may detain the vehicle until the delinquent fines or penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. – When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The motor carrier under whose authority the vehicle is being operated or the owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State shall not be liable for damage to the vehicle or loss of the property being hauled."

SECTION 2. G.S. 20-117 reads as rewritten:

"**§ 20-117. Flag or light at end of load.**

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles."

SECTION 3. G.S. 20-118(c)(4) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(4) A truck or other motor vehicle shall be exempt from ~~such~~ the light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry ~~by-products or~~ by-products, a business engaged in the harvest or processing of ~~seafood~~ seafood, or when transporting supplies, material, or equipment necessary for the construction of housing or land development when the destination of ~~such~~ the vehicle and load is located solely upon ~~said~~ the light-traffic road."

SECTION 4. G.S. 20-118(e) reads as rewritten:

"(e) Penalties. –

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section or axle weights authorized by special permit according to G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight

limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section or of a permitted weight under G.S. 20-119 is not punishable under G.S. 20-176.

(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this subsection."

SECTION 5. G.S. 20-119 reads as rewritten:

"**§ 20-119. Special permits for vehicles of excessive ~~size,~~ size or weight; ~~weight, or number of units;~~ fees.**

(a) The Department of Transportation may, in ~~their~~ its discretion, upon application, for good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight ~~or number of units~~ exceeding a maximum specified in this Article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. However, the Department is not authorized to issue any permit to operate or move over the State highways twin trailers, commonly referred to as double bottom trailers. Every such permit shall be carried in the vehicle to which it refers and shall be

open to inspection by any peace officer. The authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or weight exceeding the maximum expressed in this Article. The Department of Transportation shall issue rules to implement this section.~~section, but no rule shall provide that the permits issued pursuant to this section may be invalidated by law enforcement personnel.~~

(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of twelve dollars ($12.00) for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency.

(b1) Neither the Department nor the Board may require review or renewal of annual permits, with or without fee, more than once per calendar year.

(c) Nothing in this section shall require the Department of Transportation to issue any permit for any load.

(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of ~~Transportation~~ Crime Control and Public Safety may assess a ~~separate~~ civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with ~~escort vehicle requirements.~~the number of properly certified escort vehicles required.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of

house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection. In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).

(e) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S.120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

(f) The Department of Transportation shall issue rules to establish an escort driver training and certification program for escort vehicles accompanying oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet any training requirements and obtain certification under the rules issued pursuant to this subsection. These rules may provide for reciprocity with other states having similar escort certification programs. Certification credentials for the driver of an escort vehicle shall be carried in the vehicle and be readily available for inspection by law enforcement personnel. The escort and training certification requirements of this subsection shall not apply to the transportation of agricultural machinery until October 1, 2004. The Department of Transportation shall develop and implement an in-house training program for agricultural machinery escorts by September 1, 2004.

(g) The Department of Transportation shall issue annual overwidth permits for vehicles carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that do not exceed 14 feet in width. These permits shall be valid for unlimited movement without escorts on all State highways where the overwidth vehicles do not exceed posted bridge and load limits.

(h) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a permit valid at the time of the violation but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation, and the Department of Crime Control and Public Safety may

not impose any fines under this section if the person submits evidence to the Department of the existence of a permit valid at the time of the violation within 30 days of the date of the violation."

SECTION 6. This act becomes effective July 1, 2005.

SENATE
COMMITTE SUBSTITUTE

AUG 12 2005

ADOPTED

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

HOUSE BILL 669*
Committee Substitute Favorable 4/28/05
Third Edition Engrossed 5/5/05
Senate Commerce Committee Substitute Adopted 8/10/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H669-PCS50493-SU-31

Short Title: Oversize/Overweight Vehicle Changes.-AB (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW CONCERNING OVERSIZE AND OVERWEIGHT VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-96 reads as rewritten:

"**§ 20-96. Detaining property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until fines or penalties and taxes are collected.**

(a) Authority to Detain Vehicles. – A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

(5) Any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid.

(6) A property-hauling vehicle operating in violation of G.S. 20-119.

The officer may detain the vehicle until the delinquent fines or penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. – When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The motor carrier under whose authority the vehicle is being operated or the owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State shall not be liable for damage to the vehicle or loss of the property being hauled."

SECTION 2. G.S. 20-117 reads as rewritten:

"**§ 20-117. Flag or light at end of load.**

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles."

SECTION 3. G.S. 20-118(e) reads as rewritten:

"(e) Penalties. –

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section or axle weights authorized by special permit according to G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The

penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section or of a permitted weight under G.S. 20-119 is not punishable under G.S. 20-176.

(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this subsection."

SECTION 4. G.S. 20-119 reads as rewritten:

"**§ 20-119. Special permits for vehicles of excessive ~~size,~~ size or weight; ~~weight, or number of units;~~ fees.**

(a) The Department of Transportation may, in ~~their~~ its discretion, upon application, for good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight ~~or number of units~~ exceeding a maximum specified in this Article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. However, the Department is not authorized to issue any permit to operate or move over the State highways twin trailers, commonly referred to as double bottom trailers. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer. The authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or weight exceeding the maximum expressed in this Article. The Department of Transportation shall issue rules to implement this section.~~section, but no rule shall provide that the permits issued pursuant to this section may be invalidated by law enforcement personnel.~~

(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of twelve dollars ($12.00) for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for

a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency.

(b1) Neither the Department nor the Board may require review or renewal of annual permits, with or without fee, more than once per calendar year.

(c) Nothing in this section shall require the Department of Transportation to issue any permit for any load.

(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of ~~Transportation~~ Crime Control and Public Safety may assess a ~~separate~~ civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with ~~escort vehicle requirements.~~the number of properly certified escort vehicles required.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection. In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the

permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).

(e) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S.120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

(f) The Department of Transportation shall issue rules to establish an escort driver training and certification program for escort vehicles accompanying oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet any training requirements and obtain certification under the rules issued pursuant to this subsection. These rules may provide for reciprocity with other states having similar escort certification programs. Certification credentials for the driver of an escort vehicle shall be carried in the vehicle and be readily available for inspection by law enforcement personnel. The escort and training certification requirements of this subsection shall not apply to the transportation of agricultural machinery until October 1, 2004. The Department of Transportation shall develop and implement an in-house training program for agricultural machinery escorts by September 1, 2004.

(g) The Department of Transportation shall issue annual overwidth permits for vehicles carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that do not exceed 14 feet in width. These permits shall be valid for unlimited movement without escorts on all State highways where the overwidth vehicles do not exceed posted bridge and load limits.

(h) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a permit valid at the time of the violation but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation, and the Department of Crime Control and Public Safety may not impose any fines under this section if the person submits evidence to the Department of the existence of a permit valid at the time of the violation within 30 days of the date of the violation."

SECTION 5. This act becomes effective October 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 669 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Rand
Sen)

moves to amend the bill on page 2, line 16

( ) WHICH CHANGES THE TITLE

by deleting "products." and substituting "products or utility poles."; and

on page 5, line 33

by deleting "July" and substituting "October"

Comm. Amend. _____
Adopted and Engrossed
Pursuant to Rule 45.1
AUG 12 2005

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 99
PROPOSED SENATE COMMITTEE SUBSTITUTE H99-PCS70557-RG-36

Short Title: Amend Workers' Comp. Act. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT AND TO CREATE THE STUDY COMMITTEE ON WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is established the Study Committee on Workers' Compensation Benefits. The Committee shall study disability benefits available under the Workers' Compensation Act, including the following:

(1) The appropriate coverage and benefit levels, including the level of scheduled payments under G.S. 97-31, the appropriateness of cost-of-living adjustments, and a comparison of workers' compensation benefits in other states.

(2) How the workers' compensation system functions with other disability benefits, including social security and private disability.

(3) Employment issues and their relationship to the current workers' compensation system.

(4) The appropriate manner for compensation related to exposure to asbestos or silica.

(5) The manner and duration of medical benefits.

(6) Any other issues the Committee deems relevant under the workers' compensation system.

SECTION 1.(b) The Study Committee on Workers' Compensation Benefits shall consist of 12 members, appointed as follows:

(1) Six appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) Six appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Vacancies in membership shall be filled by the original appointing authority. The Committee, while in the discharge of its official duties, may exercise all powers

provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 1.(c) Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Committee, and the expenses relating to clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 1.(d) The Committee shall report to the 2006 Regular Session of the 2005 General Assembly upon its convening and shall make its final report to the 2007 General Assembly upon its convening. Progress and final reports of the Commission may include recommended legislation. The Committee shall terminate upon the convening of the 2007 General Assembly.

SECTION 1.(e) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Committee established by this act.

SECTION 2. G.S. 97-12 reads as rewritten:

"**§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.**

No compensation shall be payable if the injury or death to the employee was proximately caused by:

(1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or

(2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or

(3) His willful intention to injure or kill himself or another.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury compensation shall be reduced ten percent (10%).

"Intoxication" and "under the influence" shall mean that the employee shall have consumed a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to lose the normal control of his or her bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties at the time of the injury.

A result consistent with "intoxication" or being "under the influence" from a blood or other medical test conducted in a manner generally acceptable to the scientific

community and consistent with applicable State and federal law, if any, shall create a rebuttable presumption of impairment from the use of alcohol or a controlled substance."

SECTION 3. G.S. 97-17(b) reads as rewritten:

"(b) The Commission shall not approve a settlement agreement under this section, unless all of the following conditions are satisfied:

(1) The settlement agreement is deemed by the Commission to be fair and just, and that the interests of all of the parties and of any person, including a health benefit plan that paid medical expenses of the employee have been considered.

(2) The settlement agreement contains a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes, and a list of medical expenses, if any, that will be paid by the employer under the settlement agreement.

(3) The settlement agreement contains a finding that the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses.

It is not necessary, however, to satisfy the condition in subdivision (2) of this subsection when in the settlement agreement the employer agrees to pay all medical expenses of the employee related to the injury to the date of the settlement agreement."

SECTION 4. G.S. 97-18 reads as rewritten:

"**§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.**

(a) Compensation under this Article shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided.

(b) When the employer admits the employee's right to compensation, the first installment of compensation payable by the employer shall become due on the fourteenth day after the employer has written or actual notice of the injury or death, on which date all compensation then due shall be paid. Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced.

(c) If the employer denies the employee's right to compensation, the employer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, or within such reasonable additional time as the Commission may allow, and advise the employee in writing of its refusal to pay

compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may deny the claim in good faith or initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

(e) The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due 10 days from the day following expiration of the time for appeal from the award or judgment or the day after notice waiving the right of appeal by all parties has been received by the Commission, whichever is sooner. Thereafter compensation shall be paid in installments weekly, except where the Commission determines that payment in installments shall be made monthly or in some other manner.

(f) The employer's or insurer's grounds for contesting the employee's claim or its liability therefor as specified in the notice suspending compensation under subsection (d) of this section are the only bases for the employer's or insurer's defense on the issue

of compensability in a subsequent proceeding, unless the defense is based on newly discovered material evidence that could not reasonably have been discovered prior to the notice suspending compensation.

(g) If any installment of compensation is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(h) Within 16 days after final payment of compensation has been made, the employer shall send to the Commission and the employee a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer a civil penalty in the amount of twenty-five dollars ($25.00). The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) If any bill for services rendered under G.S. 97-25 by any provider of health care is not paid within 60 days after it has been approved by the Commission and returned to the responsible party, or within 60 days after it was properly submitted, in accordance with the provisions of this Article, to an insurer or managed care organization responsible for direct reimbursement pursuant to G.S. 97-26(g), there shall be added to such unpaid bill an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such medical bill, unless such late payment is excused by the Commission.

(j) The employer or insurer shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in subsections (b), (c), or (d) of this section. When an employee files a claim for compensation with the Commission, the Commission may order reasonable sanctions against an employer or insurer which does not, within 30 days following notice from the Commission of the filing of a claim, or within such reasonable additional time as the Commission may allow, do one of the following:

(1) Notify the Commission and the employee in writing that it is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under subsection (b) of this section.

(2) Notify the Commission and the employee that it denies the employee's right to compensation consistent with subsection (c) of this section.

(3) Initiate payments without prejudice and without liability and satisfy the requirements of subsection (d) of this section.

For purposes of this subsection, reasonable sanctions shall not prohibit the employer or insurer from contesting the compensability of or its liability for the claim."

SECTION 5. G.S. 97-26 is amended by adding a new subsection to read:

"(i) Resolution of Dispute. – The employee or health care provider may apply to the Commission by motion or for a hearing to resolve any dispute regarding the payment of charges for medical compensation in accordance with this Article."

SECTION 6.1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"**§ 97-25.6. Reasonable access to medical information.**

Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Article may obtain records of the treatment without the express authorization of the employee. In addition, with written notice to the employee, the employer may obtain directly from a medical provider medical records of evaluation or treatment restricted to a current injury or current condition for which an employee is claiming compensation from that employer under this Article.

Any medical records or reports, restricted to conditions related to the injury or illness for which the employee is seeking compensation, in the possession of the employee shall be furnished by the employee to the employer when requested in writing by the employer.

An employer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee's condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of the employee's condition to the employment, the restrictions from the condition, the kind of work for which the employee may be eligible, the anticipated time the employee will be restricted, and the permanent impairment, if any, as a result of the condition. When these questions are used, a copy of the written communication shall be provided to the employee at the same time and by the same means as the communication is provided to the provider.

Other forms of communication with a medical provider may be authorized by (i) a valid written authorization voluntarily given and signed by the employee, (ii) by agreement of the parties, or (iii) by order of the Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section or through other provisions for discovery authorized by the Commission's rules. In adopting rules or authorizing employer communications with medical providers, the Commission shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.

Upon motion by an employee or provider from whom medical records or reports are sought or upon its own motion, for good cause shown, the Commission may make any

order which justice requires to protect an employee or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense."

SECTION 6.2. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. ~~Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee.~~ In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

SECTION 7. G.S. 97-82(a) reads as rewritten:

"(a) If the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Article, they may enter into a memorandum of the agreement in the form prescribed by the Commission.

An agreement, however, shall be incorporated into a memorandum of agreement in regard to compensation: (i) for loss or permanent injury, disfigurement, or permanent and total disability under G.S. 97-31, (ii) for death from a compensable injury or occupational disease under G.S. 97-38, or (iii) when compensation under this Article is paid or payable to an employee who is incompetent or under 18 years of age.

The memorandum of agreement, accompanied by ~~a full and complete medical report,~~ the material medical and vocational records, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents."

SECTION 8. G.S. 97-88.2 is amended by adding a new subsection to read:

"(a1) When a person is convicted under subsection (a) of this section, the Commission may enter such orders as necessary to ensure that the person convicted does not benefit from the unlawful conduct."

SECTION 9. It is the intent of the General Assembly to provide the North Carolina Industrial Commission with adequate resources by establishing new positions to assist the Commission in performing its important task.

SECTION 10. Sections 2, 4, and 8 of this act become effective October 1, 2005. Sections 3, 5, 6, 6.1, 6.2, and 7 of this act are effective when this act becomes law and apply to claims pending and filed on or after that date. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. D

H. B. No. 99 DATE 8-12-05

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

COMMITTEE SUBSTITUTE _____

Rep.) Soles

✓ Sen.)

moves to amend the bill on page 3, line 27

( ) WHICH CHANGES THE TITLE

by inserting the words "OR INSURER" between the words employer and admits

And on page 3 line 41 by inserting the words "OR INSURER" between the words employer and denies

And at the end of p3 line 41 after the word employer at the end of the line 1 inserting the words "OR insurer"

And on page 5 line 11 by inserting the words "OR INSURER" between the words employer and shall.

And on page 5 line 15 by inserting the words "OR INSURER" between the words employer and fails.

And on p5 line 16 by inserting the words "OR INSURER" between the words employer and a.

Comm. Amend. Adopted and Engrossed Pursuant to Rule 45.1 AUG 12 2005

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen) Page 2 of Amendment

EDITION No. D

H. B. No. 99 DATE 8-12-05

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 6, line 12

( ) WHICH CHANGES THE TITLE

by inserting the words "OR INSURER" between the words employer and paying;

and page 6 line 15 by inserting the words "or insurer" between the words employer and may

and page 6 line 22 by inserting the words "or insurer" between the words employer and paying.

Comm. Amend. _____
Adopted and Engrossed
Pursuant to Rule 45.1
AUG 12 2005

Janet Pruitt

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

H 1

HOUSE BILL 1025

Short Title:	Winemaking on Premises Permit.	(Public)
Sponsors:	Representatives Luebke; LaRoque and Ross.	
Referred to:	Alcoholic Beverage Control.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR 'WINEMAKING ON PREMISES' BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(16) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(37) Winemaking on premises permit. – $400.00."

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

HOUSE BILL 1025:
Winemaking on Premises Permit

BILL ANALYSIS

Committee:	House Alcoholic Beverage Control	**Date:**	May 3, 2005
Introduced by:	Rep. Luebke	**Summary by:**	Brenda J. Carter
Version:	First Edition		Committee Co-Counsel

SUMMARY: House Bill 1025 creates a new "Winemaking on Premises" permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. There is a $400 application fee for the permit.

CURRENT LAW: Under G.S. 18B-307 it is generally unlawful for any person without the appropriate ABC permit to:

- Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage
- Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage.
- Manufacture any alcoholic beverage, without first obtaining the applicable ABC permit and revenue licenses.

There are two notable exceptions to the general prohibition against the unlicensed manufacture of alcoholic beverages. G.S. 18B-306 allows an individual to make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests; and G.S. 18B-1001(14) provides for the manufacture of malt beverages pursuant to a "Brew on Premises" permit. A brew on premises permit authorizes the holder to rent the equipment and space necessary to produce malt beverages only; it does not apply to the manufacture of wine.

A Brew on Premises permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in federal law. The statute requires that the customer do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

BILL ANALYSIS: House Bill 1025 would provide for the licensing of commercial establishments in which individuals could purchase ingredients and rent equipment, time, and space to make unfortified wine on the premises for their personal and family use, similar to the current brew on premises permit for making malt beverages. The permit holder will not engage in the actual production of the wine, and all wine must be removed from the premises by the customer and used only for home consumption and the customer's personal use. The fee for the permit is $400.

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

H1025e1-SMRV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1411

Committee Substitute Favorable 5/10/05

Short Title: Update Consumer Credit Sales Cap. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE CAP FOR THE AMOUNT FINANCED THAT FALLS WITHIN THE MEANING OF A CONSUMER CREDIT SALE IN ORDER TO REFLECT THE INCREASE IN THE COST OF CONSUMER GOODS AND SERVICES DUE TO INFLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25A-1 reads as rewritten:

"**§ 25A-1. Scope of act.**

This Chapter applies only to consumer credit sales as hereinafter defined, except that G.S. 25A-37, referral sales, applies to all sales of goods or services as provided therein. This Chapter does not apply to a bona fide direct loan transaction in which a lender makes a direct loan to a borrower, and such lender is not regularly engaged, directly or indirectly, in the sale of goods or the furnishing of services as defined in this Chapter.

Except for G.S. 25A-37, referral sales, ~~and~~ those sales defined in G.S. 25A-2(b), and those sales with amounts financed in excess of twenty-five thousand dollars ($25,000) under G.S. 25A-2(a)(5), this Chapter does not apply to any party or transaction that is not also subject to the provisions of the Consumer Credit Protection Act (Federal Truth-in-Lending Act)."

SECTION 2. G.S. 25A-2(a) reads as rewritten:

"**§ 25A-2. 'Consumer credit sale' defined.**

(a) Except as provided in subsection (c) of this section, a "consumer credit sale" is a sale of goods or services in which

(1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,

(2) The buyer is a natural person,

(3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,

(4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and

(5) The amount financed does not exceed ~~twenty-five thousand dollars ($25,000)~~ seventy-five thousand dollars ($75,000) or, in the case of a debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed."

SECTION 3. This act becomes effective October 1, 2005, and applies to sales that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 237*

Committee Substitute Favorable 7/6/05
Committee Substitute #2 Favorable 7/28/05

Short Title: Revise Mortgage Lending Act. (Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.

(2a) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.

(2b) Affiliated mortgage banker. – A licensed mortgage banker that meets the criteria of either sub-subdivisions a., b., and c. of this subdivision or sub-subdivisions d. and e. of this subdivision:

a. The licensee, by itself or with its affiliates, is licensed in five or more states to engage in the mortgage lending business and (i) is supervised by a state or federal regulatory agency whose regulatory scheme has been determined by the Commissioner to be substantially similar to that of North Carolina, (ii) is organized and supervised under the laws of a state that has adopted a model licensing law endorsed by the Commissioner; or (iii) is supervised by a state or federal agency that is a party to an interstate compact, or has otherwise entered into a cooperative reciprocal agreement by which the state or federal regulatory agency and the State of North Carolina, directly or by duly authorized act of the Commissioner, have mutually agreed to recognize state licensing laws which have specific enumerated criteria.

b. The licensee, including its affiliates and wholly owned subsidiaries, has more than 100 employees that are licensed pursuant to this Article.

c. The licensee has a consolidated net worth of one hundred million dollars ($100,000,000) or more, or if the licensee does not have the required net worth, its parent shall provide to the Commissioner (i) evidence satisfactory to the Commissioner that the parent has a net worth of one hundred million dollars ($100,000,000) or more, and (ii) an unconditional guarantee or comparable instrument of surety satisfactory to the Commissioner of the performance of the licensee of its obligations under this Article.

d. The licensee is a direct or indirect wholly owned subsidiary of a bank holding company or financial services holding company subject to regulation by the Federal Reserve Board or the Office of Thrift Supervision.

e. The licensee has a net worth of one hundred million dollars ($100,000,000) or, if the licensee does not have the required net worth, (i) its parent, if it is not a bank holding company or financial holding company, meets the requirements of sub-subdivision c. of this subdivision or (ii) its parent, if such parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars ($10,000,000,000) and provides the Commissioner with the unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6) Control. – ~~The~~ Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker and is treated as an employee for purposes of compliance with the federal income tax laws.

(7a) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).

(8) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this sub-subdivision (8)c.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering mortgage loans.

i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.

(9) Licensee. – A loan officer, limited loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(10) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(10a) Limited loan officer. – An individual who, in exchange for compensation as an employee of an affiliated mortgage banker, directly solicits, negotiates, offers, or makes commitments for mortgage loans. The definition of limited loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(11) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(12) Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(13) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise.

(15) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.

(15a) Parent. – The person that controls an affiliated mortgage banker, as control is defined in subdivision (2a) of this section.

(16) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(17) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(18) Qualified person. – A person who is employed as a loan officer by a qualified lender, or by a mortgage banker or broker registered with the Commissioner under former Article 19 of this Chapter, or who is a general partner, manager, or officer of a qualified lender, registered mortgage banker, or registered mortgage broker.

(19) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(20) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan."

SECTION 2. G.S. 53-243.02 reads as rewritten:

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer, limited loan officer, mortgage banker, or mortgage broker issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer or limited loan officer is not effective during any period when that person is not employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article. The license of an exclusive mortgage broker is not effective during any period when that person is not authorized to act as a single licensee or exempt person pursuant to G.S. 53-243.05(c)(1a).

When a loan officer or a limited loan officer ceases to be employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article, the loan ~~officer~~ officer, limited loan officer, and the mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. When the authority of an exclusive mortgage broker to act on behalf of the principal licensee or exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or exempt person for whom the exclusive mortgage broker is an agent shall promptly notify the Commissioner in writing. The mortgage broker, affiliated mortgage banker, mortgage banker, or exempt person's notice shall include a statement of the specific reason or reasons for, as applicable, the termination of the loan officer's or limited loan officer's employment or exclusive mortgage broker's authority.

A loan officer or limited loan officer shall not be employed simultaneously by more than one affiliated mortgage banker, mortgage ~~broker~~ broker, or mortgage banker licensed under this Article.

(d) Each affiliated mortgage banker, mortgage ~~broker~~ broker, and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers or limited loan officers who are employed with the affiliated mortgage banker, mortgage ~~broker~~ broker, or mortgage banker.

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, an affiliated mortgage banker, a mortgage broker, limited loan officer, or loan officer unless such person is licensed in accordance with this Article.

(f) Any person who has completed and filed with the Commissioner the application and all documents required for licensure as a loan officer other than documents relating to the required examination and the mortgage lending fundamentals course may act as a loan officer during the period before action is taken on the application by the Commissioner, if:

(1) The Commissioner has not denied, revoked, or taken any adverse action with respect to an application filed by or license held by such person during the five-year period ending on the date of filing of the application;

(2) The loan officer is employed by a licensed mortgage broker or mortgage banker, and the managing principal of such mortgage broker or mortgage banker (i) certifies to the Commissioner in writing that the managing principal reasonably believes that the application of the person for licensure as a loan officer meets or exceeds all of the relevant requirements of this Article for licensure and (ii) undertakes in writing that the managing principal and the employer will be responsible for the acts of the applicant during the period that such application is pending; and

(3) The person is currently or has within the six-month period prior to the date of the application been employed as and acting as a loan officer

for an exempt entity which entity is exempt by virtue of an exemption claimed under G.S. 53-243.01(8)c.

(g) The Commissioner may deny or suspend the rights of a mortgage broker or mortgage banker to employ a loan officer acting under subsection (f) of this section if the Commissioner finds that the mortgage broker or mortgage banker, or the managing principal thereof, makes the certification or undertaking set forth in subdivision (2) of subsection (f) of this section not in good faith."

SECTION 3. G.S. 53-243.05(c)(1) reads as rewritten:

"(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision."

SECTION 4. G.S. 53-243.05(e) reads as rewritten:

"(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars ($50.00) for licensure as a loan ~~officer,~~ officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks."

SECTION 5. Article 19A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked, suspended, or barred.**

(a) An affiliated mortgage banker shall notify the Commissioner when it hires a limited loan officer on forms prescribed by the Commissioner. The form shall contain any information the Commissioner deems necessary including the name, social security number, address, and business location of the limited loan officer. Limited loan officers employed by an affiliated mortgage banker shall:

(1) Be at least 18 years of age.

(2) Work exclusively for an affiliated mortgage banker. The affiliated mortgage banker who hires the limited loan officer shall:

a. Supervise the limited loan officer as required by this Article.

b. Sign the notification form regarding the hiring of the applicant.

c. Certify the applicant is qualified as a limited loan officer subject to background checks, training, testing, and fundamental education requirements.

d. Be jointly and severally liable for any and all claims and damages of any type, including punitive damages pursuant to

Chapter 1D of the General Statutes arising out of the limited loan officer's mortgage lending activities, as allowed by law.

(b) An applicant for a limited loan officer license may act provisionally as a limited loan officer during the pendency of the application before the Commissioner for up to 60 days after submission of the completed forms identified in subsection (a) of this section and a written undertaking by the employing affiliated mortgage banker that it will be responsible for all the applicant's mortgage banking activities.

(c) Systems, programs, and procedures used by the affiliated mortgage banker for employment background checks, training, testing, and education by the affiliated mortgage banker shall be submitted to and reviewed by the Commissioner who may approve those which are comparable and functionally equivalent to those for loan officers under G.S. 53-243.05 and G.S. 53-243.07. The Commissioner must be notified of any material changes or modifications to such approved systems, programs, and procedures. The Commissioner may approve those systems, programs, and procedures used by the affiliated mortgage banker for these purposes that meet or exceed programs otherwise accredited by the Commissioner or that have been approved for the affiliated mortgage banker by at least five other states in which the affiliated mortgage banker is licensed and whose licensing requirements are substantially similar to those of North Carolina.

(d) Except as specified in this section, limited loan officers are subject to licensing standards and disciplinary authority in the same way as loan officers under this Article.

(e) A person whose license is revoked, suspended, or barred under this section is prohibited from participating in the mortgage lending business in this State."

SECTION 6. G.S. 53-243.08 reads as rewritten:

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, ~~other than an exclusive mortgage broker qualifying under G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person has been employed by the affiliated mortgage banker for at least one year as a loan officer, limited loan officer, or in a comparable position in another state. The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its

managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the ~~licensee, other than an exclusive mortgage broker,~~ licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article."

SECTION 7. G.S. 53-243.12(a) reads as rewritten:

"(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, managing principal, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

j. Has falsely certified attendance or completion of hours at an approved mortgage lending continuing education course."

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

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Commerce — August 12, 2005

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