2006

SENATE
JUDICIARY I

COMMITTEE
MINUTES

Judiciary 1 Committee

Membership List

2006 Session

Senator Dan Clodfelter, Chair

Senator R.C. Soles, Co-Chair

Senator Phillip Berger, Co-Chair

Senator Charlie Albertson

Senator Julia Boseman

Senator Andrew Brock

Senator Harry Brown

Senator Janet Cowell

Senator Peter Brunstetter

Senator David Hoyle

Senator Clark Jenkins

Senator Jeanne Lucas

Senator Vernon Malone

Senator Martin Nesbitt

Senator Tony Rand

Senator Richard Stevens

Senator Jerry Tillman

Staff Attorney's – Walker Reagan, Hal Pell, and Bill Gilkeson

Committee Assistant, Wanda Joyner

2005-2006 Biennium

	Bill	Introducer	Short Title		Date	Latest Action
	H 20	Holliman	HEALTH INSURANCE CREDIT/MINIMUM WAGE.	*S	07-13-2006	Re-ref Com On Judiciary I
	H 629	Adams	OPTION TO FREEZE CREDIT REPORT.	*S	05-31-2005	Ref To Com On Judiciary I
	H 725	Ross	REAL ESTATE RESALE DEALERS.-AB	*S	06-06-2005	Ref To Com On Judiciary I
	H 826	Gibson, III	ANSONVILLE WEEDED LOT ORDINANCE.	S	07-07-2006	Re-ref Com On Judiciary I
	H1101	Allred	PROMPT RELEASE OF ELECTION RESULTS.	S	06-06-2005	Ref To Com On Judiciary I
	H1146	Michaux, Jr.	FORECLOSURE REFORM.	*S	06-06-2005	Ref To Com On Judiciary I
	H1415	Sutton	REPORT DENIAL OF SOME PISTOL PERMITS.	*S	08-24-2005	Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget
	H1844	Hackney	EXECUTIVE BRANCH ETHICS ACT - 1.	*S	06-06-2006	Re-ref Com On Judiciary I
	H1871	Goforth	SEX OFFENDER/OUT OF STATE REGISTRY/DMV CHECK.	*S	07-07-2006	Ref To Com On Judiciary I
	H2035	Stiller	OAH HEARING FACILITIES.	*S	07-19-2006	Ref To Com On Judiciary I
	H2043	Ross	2006 TECHNICAL CORRECTIONS ACT.	*S	07-19-2006	Re-ref Com On Judiciary I
	H2076	Dickson	JUVENILE CODE CHANGES.	S	07-11-2006	Ref To Com On Judiciary I
	H2881	Folwell	IDENTITY THEFT.	*S	07-27-2006	Ref To Com On Judiciary I
	S 6	Albertson	BAN VIDEO POKER/ALL BUT RESERVATIONS.	S	01-27-2005	Ref To Com On Judiciary I
	S 18	Brock	PRESIDENTIAL PRIMARY IN FEBRUARY.	S	02-01-2005	Ref To Com On Judiciary I
	S 19	Brock	ANNEXATION REFERENDUM.	S	02-01-2005	Ref To Com On Judiciary I
	S 35	Hoyle	MODIFY RED LIGHT CAMERA AUTHORIZATION.	S	02-02-2005	Ref To Com On Judiciary I
	S 61	Thomas	FELONY DEATH BY VEHICLE/SEX OFFENDER AMEND.	*S	05-09-2006	Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget
	S 125	Garrou	AMEND SEX OFFENDER REGISTRATION.	S	02-14-2005	Ref To Com On Judiciary I
$	**S 130=**	**Clodfelter**	**CURRITUCK PROPERTY CONVEYANCE.**	***S**	**03-29-2005**	**Ref To Com On Judiciary I**
	S 157=	Jenkins	INTEREST ON HIGHWAY CONDEMNATION AWARDS.	S	02-16-2005	Ref To Com On Judiciary I
	S 160	Berger	LIMIT OVER-THE-COUNTER DRUG PURCHASES.	S	02-16-2005	Ref To Com On Judiciary I
	S 200	Webster	FETAL MURDER.	S	02-24-2005	Ref To Com On Judiciary I
	S 224=	Allran	RECASTING LOST VOTES.	S	02-28-2005	Ref To Com On Judiciary I
	S 225	Kinnaird	ANY-PRECINCT VOTING PILOT.	S	02-28-2005	Ref To Com On Judiciary I
	S 227	Kinnaird	PUBLIC EMPLOYEE POLL WORKERS.	S	02-28-2005	Ref To Com On Judiciary I
	S 302	Jenkins	TRANSIT DRUG TESTING.	S	03-02-2005	Ref To Com On Judiciary I
	S 307	Shaw	FAYETTEVILLE ANNEXATION REFERENDUM.	S	03-02-2005	Ref To Com On Judiciary I
	S 355=	Jenkins	FEDERAL JURISDICTION.	S	03-03-2005	Ref To Com On Judiciary I
	S 389=	Snow, Jr.	LIMIT LIABILITY FOR AGRITOURISM	S	03-07-2005	Ref To Com On Judiciary I

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Bill	Introducer	Short Title		Date	Latest Action
		ACTIVITIES.			
S 395	Hoyle	GRANDPARENTS VISITATION/LOUISE'S LAW.	S	03-07-2005	Ref To Com On Judiciary I
S 397=	Stevens	PERSONAL WATERCRAFT CHANGES.	S	03-07-2005	Ref To Com On Judiciary I
S 419	Berger	INCREASED SECURITY FOR DRIVERS LICENSES.	S	03-07-2005	Ref To Com On Judiciary I
S 524	Clodfelter	CLARIFY JURISDICTION.	S	03-15-2005	Ref To Com On Judiciary I
S 526	Clodfelter	DETER JUVENILE AUTO LARCENY.	S	03-15-2005	Ref To Com On Judiciary I
S 539	Clodfelter	PUBLIC CAMPAIGN FUND AMENDMENTS.	S	03-15-2005	Ref To Com On Judiciary I
S 558	Kinnaird	OVERSEAS RUNOFF ABSENTEE BALLOTS.	S	03-15-2005	Ref To Com On Judiciary I
S 564	Boseman	DRUG TREATMENT CT/DART REFERRAL.	S	03-16-2005	Ref To Com On Judiciary I
S 575	Clodfelter	BUSINESS COURT CASES/FEE.	S	03-16-2005	Ref to Judiciary I. If fav, re-ref to Finance
S 610=	Jenkins	HOV LANE PENALTIES.-AB	S	03-16-2005	Ref to Judiciary I. If fav, re-ref to Finance
S 693	Rand	JURORS MAY NOT PROFIT FROM SERVICE.	S	03-21-2005	Ref To Com On Judiciary I
S 726	Berger	PARK CONDEMNATION.	S	03-22-2005	Ref To Com On Judiciary I
S 738	Rand	DWI SENTENCING ENFORCEMENT.	S	03-22-2005	Ref To Com On Judiciary I
S 742	Rand	LT. GOV./SEC. OF STATE CONFORMING CHANGES.	S	03-22-2005	Ref To Com On Judiciary I
S 745	Rand	AMEND INVESTIGATIVE GRAND JURY AUTHORITY.	S	03-22-2005	Ref To Com On Judiciary I
S 746	Rand	TAKE DNA SAMPLE ON ARREST FOR CERTAIN CRIMES.	S	03-22-2005	Ref To Com On Judiciary I
S 783	Forrester	REPORT HACKER/FRAUDULENT ACCESS TO ID DATA.	S	05-03-2005	Re-ref Com On Judiciary I
S 784	Forrester	FIRST AMENDMENT RIGHTS.	S	03-23-2005	Ref To Com On Judiciary I
S 791	Berger	HEALTH CARE PROVIDER SOLICITATION.	S	03-23-2005	Ref To Com On Judiciary I
S 792	Berger	CLARIFY PUBLIC RECORDS LAWS.	S	03-23-2005	Ref To Com On Judiciary I
S 793=	Berger	GOVERNMENT AGENCIES LIMIT RELEASE OF SSNS.	S	03-23-2005	Ref To Com On Judiciary I
S 812	Clodfelter	MOTIONS TO COMPEL DEPOSITIONS/EVIDENCE.	S	03-23-2005	Ref To Com On Judiciary I
S 853	Clodfelter	DEATH BY DISTRIBUTION OF DRUGS.	S	03-23-2005	Ref To Com On Judiciary I
S 904=	Weinstein	SMALL INSTALLMENT CONSUMER LOANS - 1.	S	03-23-2005	Ref To Com On Judiciary I
S 913	Clodfelter	RECOVERY FEE/ABANDONED MANUFACTURED HOMES.	S	03-24-2005	Ref to Judiciary I. If fav, re-ref to Finance. If fav, re-ref to Appropriations/Base Budget

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2005-2006 Biennium

	Bill	Introducer	Short Title		Date	Latest Action
	S 917	Clodfelter	PERSONAL REPRESENTATIVE/SELLING REAL PROPERTY.	S	03-24-2005	Ref To Com On Judiciary I
	S 918	Hoyle	SPORTSMAN'S BILL OF RIGHTS.	S	03-24-2005	Ref To Com On Judiciary I
	S 921=	Jacumin	CONSUMER CREDIT PROTECTION ACT.	S	05-04-2005	Re-ref Com On Judiciary I
	S 926	Clodfelter	ELECTION ADMIN. AMENDMENTS.	S	03-24-2005	Ref To Com On Judiciary I
	S 928	Clodfelter	JURY EXHIBITS/CRIMINAL TRIALS.	S	03-24-2005	Ref To Com On Judiciary I
	S 935	Garrou	NO SS# ON HEALTH ID CARDS.	S	03-24-2005	Ref To Com On Judiciary I
	S 953	Lucas	REPEAL FELONY MURDER RULE.	S	03-24-2005	Ref To Com On Judiciary I
$	**S 954=**	**Lucas**	**SAME DAY REG. AT ONE-STOP SITES.**	**S**	**03-24-2005**	**Ref To Com On Judiciary I**
	S 976=	Webster	TAXPAYER AND CITIZEN PROTECTION ACT.	S	03-24-2005	Ref To Com On Judiciary I
	S1016	Lucas	EXTEND AGE CUTOFF/CHILD SUPPORT.	S	03-24-2005	Ref To Com On Judiciary I
$	**S1042=**	**Clodfelter**	**VOTER-OWNED ELECTIONS.**	**S**	**03-24-2005**	**Ref To Com On Judiciary I**
	S1044	Clodfelter	UNDERTAKING TO STAY MONEY JUDGMENT.	S	03-24-2005	Ref To Com On Judiciary I
	S1045=	Clodfelter	ESTABLISH NC INNOCENCE INQUIRY COMMISSION.	S	03-24-2005	Ref To Com On Judiciary I
	S1066	Rand	CLARIFY SEX OFFENDER REGISTRY.	S	03-24-2005	Ref To Com On Judiciary I
	S1069	Rand	DWI TASK FORCE RECOMMENDATIONS.	S	03-24-2005	Ref To Com On Judiciary I
	S1070	Rand	BALANCE FAIR SENTENCING/STRUCTURED SENTENCING.	*S	05-04-2005	Re-ref Com On Judiciary I
	S1098	Boseman	NO THIRD PARTY RELEASE OF SSN.	S	03-24-2005	Ref To Com On Judiciary I
	S1106	Clodfelter	CAMPAIGN FINANCE AMENDMENTS.	S	03-24-2005	Ref To Com On Judiciary I
	S1135	Brock	NOTARIZED CONSENT FOR MINOR'S ABORTION.	S	03-24-2005	Ref To Com On Judiciary I
	S1137	Brock	SPORT SHOOTING RANGE PROTECTION.	S	03-24-2005	Ref To Com On Judiciary I
	S1383=	Jenkins	DOT CONTRACT PROVISION CHANGES.	S	05-16-2006	Ref To Com On Judiciary I
	S1484	Nesbitt, Jr.	OAH HEARING FACILITIES.	S	05-18-2006	Ref To Com On Judiciary I
	S1596	Albertson	COMMUNITY CONSERVATION ASSISTANCE PROGRAM.	S	06-08-2006	Re-ref Com On Judiciary I
$	**S1694**	**Rand**	**STATE GOVERNMENT ETHICS ACT.**	**S**	**05-30-2006**	**Re-ref Com On Judiciary I**
	S1948	Kinnaird	REFORM LOBBYING LAWS.	S	05-25-2006	Ref To Com On Judiciary I
$	**S1976**	**Presnell**	**REFORM GOVERNMENTAL ETHICS.**	**S**	**05-26-2006**	**Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget**
$	**S1990**	**Soles, Jr.**	**DIVIDE SUPERIOR COURT DISTRICT 13.**	**S**	**06-21-2006**	**Re-ref Com On Judiciary I**
$	**S2033**	**Rand**	**MEDICAID FRAUD/PRIVATE CIVIL ACTIONS.**	**S**	**05-26-2006**	**Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget**
	S2040	Rand	MEDICAID FRAUD/INCR. PENALTY/SUBPOENA.	S	05-26-2006	Ref To Com On Judiciary I

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Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 1, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1415	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Sutton
SB 1204	Jessica's Law/Strengthen Sex Offender Laws.	Senator Allran
SB 1211	Blaire Thompson Drug Dealer Liability Act.	Senator Boseman
SB 1383	DOT Contract Provision Changes.	Senator Jenkins
SB 1484	OAH Hearing Facilities.	Senator Nesbitt, Jr.
SB 1485	Occupational Licensing Board Reports.	Senator Nesbitt, Jr. voted out

Senator Daniel G. Clodfelter, Chair

June 1, 2006

Judiciary I Committee

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with seventeen members present. Pages for the day were; Blair Belk, Kayloni Witherspoon and Jason Jones from Charlotte, NC , Scott Leath from Fuquay-Varina, NC, and Mark Niegelsky from Greensboro, NC.

Senator Clodfelter introduced the following bills:

HB-1415 He stated that this bill would be displaced for further study, and rescheduled for a future meeting.

SB-1484 (OAH Hearing Facilities) Committee Substitute was introduced. No action was taken on the bill.

SB-1485 (Occupational Licensing Board Reports) was introduced by Senator Clodfelter. Bill sponsor, Senator Martin Nesbitt explained that the bill would require each occupational licensing board to file an annual report and annual financial report with the Joint Legislative Administrative Procedure Oversight Committee, in addition to the Secretary of State and Attorney General. Senator's Tony Rand, Jeanne Lucas, and Charlie Albertson had questions. The questions were answered by staff attorney, Hal Pell, and Senator Nesbitt. Senator Richard Stevens moved for a Favorable Report. All members voted yes. Motion carried.

SB-1204 (Jessica's Law/Strengthen Sex Offender Laws) Committee Substitute was introduced by Senator Clodfelter. He stated that the bill would not be voted on at this time, but there would be discussion about the bill. Bill sponsor, Senator Austin Allran explained changes to the bill. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Allran stated that there would be amendments made to the bill at a future meeting. Senator's RC Soles, Charlie Albertson, Phillip Berger, David Hoyle, Jerry Tillman and Jeanne Lucas had questions. The questions were answered by staff attorney Hal Pell and Senator Allran, and Ms. Mildred Spears, NC Department of Corrections. No action taken. Bill displaced, to be heard at a later date.

SB-1211 (Blaire Thompson Drug Dealer Liability Act) was introduced by Senator Clodfelter for discussion only. Bill sponsor, Senator Julia Boseman explained the bill. She named several people who had died from drug use, including Blair Thompson, a teacher from Wilmington, NC who died from drug overdose. Blair's parents, Keith and Rachel Thompson from Wilmington. NC was introduced by Senator Boseman. Mr. Thompson spoke to the committee in detail about the

terrible experiences his daughter and her family endured during the time prior to her death eight month ago, and the extreme dangers of drug use. He expressed the very urgent need for legislation, to make stronger laws regarding drug dealers. He urged the committee to pass this bill. Senator Clodfelter urged the committee to study the bill carefully, stating that it would be displaced at this time, and heard at a future meeting.

Senator Clodfelter stated that HB-1048 (Governor's DWI Task Force Recommendations) will be on the agenda next week.

The meeting adjourned at 10:49 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, June 01, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1485** Occupational Licensing Board Reports.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1484*

Short Title:	OAH Hearing Facilities.	(Public)
Sponsors:	Senators Nesbitt, Hartsell, Webster; Bland, Dorsett, Kerr, Purcell, Snow, and Stevens.	
Referred to:	Judiciary I.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SENIOR RESIDENT SUPERIOR COURT JUDGES TO PROVIDE FACILITIES FOR HEARINGS CONDUCTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-24 reads as rewritten:

"**§ 150B-24. Venue of hearing.**

(a) The hearing of a contested case shall be conducted:

(1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;

(2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or

(3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

(c) To the extent practicable, the senior resident superior court judge may provide suitable facilities for the conduct of hearings under this Article in the county or counties within the judge's district at the time that a hearing is scheduled therein. The senior resident superior court judge may, to the extent the judge determines necessary and practicable, provide or arrange for security at hearings upon the request of an administrative law judge."

SECTION 2. This act becomes effective October 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-70
SENATE BILL 1485

AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO ANNUALLY REPORT CERTAIN INFORMATION TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-2 reads as rewritten:

"**§ 93B-2. Annual reports required; contents; open to inspection.**

(a) Each occupational licensing board shall file with the Secretary of ~~State and with the Attorney General an annual financial report, and~~State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

(1) The address of the board, and the names of its members and ~~officers;~~officers.

(2) The number of persons who applied to the board for ~~examination;~~examination.

(3) The number who were refused ~~examination;~~examination.

(4) The number who took the ~~examination;~~examination.

(5) The number to whom initial licenses were ~~issued;~~issued.

(6) The number who applied for license by reciprocity or ~~comity;~~comity.

(7) The number who were granted licenses by reciprocity or ~~comity;~~comity.

(8) The number of licenses suspended or ~~revoked; and~~revoked.

(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.

(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) Each occupational licensing board shall file with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous 12-month period.

(c) The reports required by this section shall be open to public inspection."

SECTION 2. This act becomes effective July 1, 2006. The first reports required by G.S. 93B-2, as amended by Section 1 of this act, are due no later than July 1, 2007.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker Pro Tempore of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:56 p.m. this 10th day of July, 2006

SENATE BILL 1485:
Occupational Licensing Board Reports

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 1, 2006
Introduced by:	Sen. Nesbitt	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1485 would require each occupational licensing board to file an annual report and annual financial report with the Joint Legislative Administrative Procedure Oversight Committee, in addition to the Secretary of State and Attorney General. This bill is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.***

CURRENT LAW: Under current G.S. 93B-2, each occupational licensing board must file an annual report and an annual financial report with the Secretary of State and the Attorney General. The content of the annual financial report is not defined.

BILL ANALYSIS: Senate Bill 1485 would add the Joint Legislative Administrative Procedure Oversight Committee to the entities to which each occupational licensing board must file an annual report and an annual financial report.

In addition, the bill would add to the information that must be contained in the annual report the substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board and the substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

Also the bill would require that the annual financial report include the sources and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous 12-month period.

EFFECTIVE DATE: The bill becomes effective July 1, 2006. The first reports would be due no later than July 1, 2007.

Jeff Hudson, counsel to Joint Legislative Administrative Procedure Oversight Committee, substantially contributed to this summary.

S1485e1-SMRU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1485*

Short Title:	Occupational Licensing Board Reports.	(Public)
Sponsors:	Senators Nesbitt, Kerr, Stevens, Webster; Bland, Dorsett, Hartsell, Purcell, and Snow.	
Referred to:	Judiciary I.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO ANNUALLY REPORT CERTAIN INFORMATION TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-2 reads as rewritten:

"**§ 93B-2. Annual reports required; contents; open to inspection.**

(a) Each occupational licensing board shall file with the Secretary of ~~State and with the Attorney General an annual financial report, and~~State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

(1) The address of the board, and the names of its members and ~~officers;~~officers.

(2) The number of persons who applied to the board for ~~examination;~~examination.

(3) The number who were refused ~~examination;~~examination.

(4) The number who took the ~~examination;~~examination.

(5) The number to whom initial licenses were ~~issued;~~issued.

(6) The number who applied for license by reciprocity or ~~comity;~~comity.

(7) The number who were granted licenses by reciprocity or ~~comity;~~comity.

(8) The number of licenses suspended or ~~revoked; and~~revoked.

(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.

(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) Each occupational licensing board shall file with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous 12-month period.

(c) The reports required by this section shall be open to public inspection."

SECTION 2. This act becomes effective July 1, 2006. The first reports required by G.S. 93B-2, as amended by Section 1 of this act, are due no later than July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1204

Short Title:	Jessica's Law/Strengthen Sex Offender Laws.	(Public)
Sponsors:	Senators Allran, Atwater, Bingham, Purcell; Albertson, Apodaca, Berger of Rockingham, Blake, Boseman, Brock, Brown, Forrester, Garrou, Garwood, Goodall, Hartsell, Hunt, Jacumin, Jenkins, Lucas, Pittenger, Presnell, Shaw, Smith, Snow, Stevens, Swindell, Tillman, and Weinstein.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO APPROPRIATE FUNDS TO IMPLEMENT AN ACTIVE AND PASSIVE ELECTRONIC MONITORING SYSTEM TO ASSIST WITH THE SUPERVISION OF CERTAIN SEX OFFENDERS PLACED ON PROBATION, PAROLE, OR POST-RELEASE SUPERVISION, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10 year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2. G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3. G.S. 14-208.7 reads as rewritten:

"**§ 14-208.7. Registration.**

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within ~~10 days~~ 48 hours of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within ~~10 days~~ 48 hours of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of at least 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of at least 10 years following each conviction for a reportable offense.

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph;

(4) The person's fingerprints;

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student; and

(6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry.

(d) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 4. G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than ~~the tenth day~~48 hours after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register ~~moves~~ intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least 48 hours before the date the person intends to leave this State to establish residence in another state or jurisdiction.~~provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the~~ The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence. The person shall also include a current photograph with the information. The sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence.

The sheriff shall also immediately forward the ~~change of address~~ information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within 48 hours after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person ~~shall~~ shall, within 48 hours, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new ~~status not later than the tenth day after the change to the sheriff of the county with whom the person registered.~~status. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person ~~shall~~ shall, within 48 hours, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than ~~the tenth day~~ 48 hours after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division."

SECTION 5. G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

The information in the county registry shall be verified ~~annually~~ semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall return the verification form in person to the sheriff within ~~10 days~~ 48 hours after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) The person shall include a current photograph of himself or herself with the verification form. The photograph must be easy to view and

must provide a true and accurate likeness of the offender. If, in the sheriff's discretion, the photograph does not satisfy that criteria, then the sheriff may take a photograph of the offender to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within ~~10 days~~48 hours after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address."

SECTION 6. G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(7) Fails to report in person to the sheriff's office as required by G.S. 14-208.7, 14-208.9, and 14-208.9A.

(8) Reports his or her intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff in the manner required by G.S. 14-208.9."

SECTION 7. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.**

(a) Any person who has reason to believe that an offender required to register under this Article is not complying, or has not complied, with the requirements of this Article and who, with the intent to assist the offender in eluding a law enforcement agency that is seeking to find the offender to question the offender about, or to arrest the offender for, his or her noncompliance with the requirements of this Article and who does any of the following is guilty of a Class H felony:

(1) Withholds information from, or does not notify, the law enforcement agency about the offender's noncompliance with the requirements of this Article, and, if known, the whereabouts of the offender.
(2) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the offender.
(3) Conceals or attempts to conceal, or assist another person in concealing or attempting to conceal, the offender.
(4) Provides information to the law enforcement agency regarding the offender that the person knows to be false information.

(b) This section does not apply if the offender is incarcerated in or is in the custody of a local, State, private, or federal correctional facility."

SECTION 8. G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. ~~Termination~~ Request for termination of registration requirement.**

(a) A person required to register under this Part who has served his or her sentence may petition the superior court in the district court where the person resides to terminate the registration requirement~~The requirement that a person register under this Part automatically terminates~~ 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article. The court may grant or deny the relief if the petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence, the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the petitioner shall forward a certified copy of the order to the Division to have the person's name removed from the registry.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated."

SECTION 9. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.25A. Community and public notification.**

(a) Law enforcement agencies shall inform members of the community and the public of the presence of any person required to register under this Part as a recidivist, as sexual predator, or because the person has committed an aggravated offense. Upon notification of the presence of a registrant under this Part, the sheriff of the county where the registrant establishes or maintains a permanent or temporary residence shall

notify members of the community and the public of the presence of the registrant in a manner deemed appropriate by the sheriff. Within 48 hours after receiving notification of the presence of a registrant under this Part, the sheriff of the county where the registrant temporarily or permanently resides shall notify each licensed day care center, elementary school, middle school, and high school within a one-mile radius of the registrant's temporary or permanent residence of the registrant's presence. The information to be provided under this section shall not include the name of any victim of the registrant, but shall include all of the following:

(1) The name of the registrant.

(2) A description of the registrant, including a photograph.

(3) The registrant's current address, including the name of the county or municipality, if known.

(4) The circumstances of the registrant's offense.

(5) Whether the victim of the offense was, at the time of the offense, a minor or an adult.

(b) The sheriff may coordinate the community and public notification efforts with the Division. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the Division.

(c) The Division shall notify the public of all registrants under this Part through the Internet. The Internet notice shall include the information required by subsection (a) of this section.

(d) The Division shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and public of the presence of persons required to register under this Part."

SECTION 10. G.S. 14-208.27 reads as rewritten:

"**§ 14-208.27. Change of address.**

If a juvenile who is adjudicated delinquent and required to register changes address, the juvenile court counselor for the juvenile shall provide written notice of the new address not later than ~~the tenth day~~ 48 hours after the change to the sheriff of the county with whom the juvenile had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the juvenile moves to another county in this State, the Division shall inform the sheriff of the new county of the juvenile's new residence."

SECTION 11. G.S. 14-208.28 reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

The information provided to the sheriff shall be verified ~~annually~~ semiannually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration ~~date,~~date and six months after that date the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within ~~10 days~~48 hours after the receipt of the form.

(3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form."

SECTION 12. Part 3 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.24A. Sexual predator prohibited from working or volunteering at any place where children regularly congregate.**

(a) Any person required to register under this Part because he or she is classified as a sexually violent predator, is a recidivist as defined by G.S. 14-208.6, or is a person convicted of an aggravated offense as defined by G.S. 14-208.6 shall not work, for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate.

(b) A violation of this section is a Class F felony."

SECTION 13. Article 33 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-259A. Altering, tampering, or damaging electronic monitoring equipment used to monitor persons placed on house arrest, probation, post-release supervision or other types of release.**

(a) It is unlawful to alter, tamper with, damage, or destroy any electronic monitoring equipment used to monitor a person who has been placed on probation, house arrest, post-release supervision, parole, study release, or work release.

(b) A violation of this section is a Class F felony."

SECTION 14. G.S. 15A-1341 is amended by adding a new subsection to read:

"(d) Search of Sex Offender Registration Information Required When Placing a Defendant on Probation. – When the court places a defendant on probation, the probation officer assigned to the defendant shall conduct a search of the defendant's name or other identifying information against the registration information regarding sex offenders compiled by the Division of Criminal Statistics of the Department of Justice in accordance with Article 27A of Chapter 14 of the General Statutes. The probation officer may conduct the search using the Internet site maintained by the Division of Criminal Statistics."

SECTION 15. G.S. 15A-1343(b2) reads as rewritten:

"(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

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

(7) If the defendant is required to register under Part 3 of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense, as those terms are defined in G.S.14-208.6, then the defendant must submit to electronic monitoring as provided in G.S. 15A-1380.6.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation."

SECTION 16. G.S. 15A-1343(c2) reads as rewritten:

"(c2) Electronic Monitoring Device Fee. – Any person placed on house arrest with electronic monitoring under subsection (b1) of this section or who is required to register as a sex offender under Part 3 of Chapter 14 of the General Statutes and therefore has electronic monitoring imposed as a condition of probation under subsection (b2) of this section and G.S. 15A-1380.6 shall pay a fee of ninety dollars ($90.00) for the electronic monitoring device. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic ~~monitoring.~~ monitoring or upon motion of the person who is required to register as a sex offender under Part 3 of Chapter 14 of the General Statutes and has electronic monitoring imposed as a condition of probation under subsection (b2) of this section and G.S. 15A-1380.6. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fee must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

SECTION 17. G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Electronic Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who violates

probation is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense, as those terms are defined in G.S.14-208.6, and if the court extends the probation as a result of the violation, then the court shall order electronic monitoring as a condition of the extended probation. The electronic monitoring system used shall comply with the provisions of G.S. 15A-1380.6."

SECTION 18. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(b2) Mandatory Electronic Monitoring for Certain Other Sex Offenders. – In addition to the other required conditions set forth in this section, the Commission shall also impose electronic monitoring as a condition for a supervisee who is required to register under Part 3 of Chapter 14 of the General Statutes because the person is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6. The electronic monitoring system used shall comply with the provisions of G.S. 15A-1380.6."

SECTION 19. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 85C.

"Electronic Monitoring Devices

"**§ 15A-1380.6. Electronic monitoring devices.**

If electronic monitoring is imposed as a condition of probation, parole, or post-release supervision on an offender who is required to register under Part 3 of Chapter 14 of the General Statutes because the offender is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, the Department of Correction shall use an electronic monitoring system that actively monitors the offender, identifies the offender's location, and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations. If an electronic monitoring system that actively monitors the offender will not work as provided by this section, then the Department of Correction shall use a passive electronic system that works within the technological or geographical limitations."

SECTION 20. The Department of Correction shall issue a Request for Proposal (RFP) for electronic monitoring equipment and monitoring services for the Division of Community Corrections' electronic house arrest and electronic monitoring programs. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services. The Department shall design the RFP to use the most recent, cost-effective technology available; the Department shall not restrict vendors to the specifications of the equipment currently utilized by the Department.

The Department of Correction shall issue a RFP for passive and active Global Positioning Systems for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services.

No less than 30 days prior to issuing these RFPs, the Department shall provide the Fiscal Research Division with copies of the draft RFPs. The RFPs shall be issued by August 1, 2006, for contract terms to begin January 1, 2007.

The Department of Correction shall report by October 1, 2007, to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the responses to the RFPs.

SECTION 21. No later than January 1, 2007, the Department of Correction shall develop a graduated risk assessment program that identifies, assesses, and closely monitors a high-risk sex offender who, while not classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, may still require extraordinary supervision and may be placed on probation, parole, or post-release supervision only on the conditions provided in G.S. 15A-1343(b2) or G.S. 15A-1368.4(b1).

SECTION 22. There is appropriated from the General Fund to the Department of Correction the sum of one million three hundred seven thousand two hundred eighteen dollars ($1,307, 218) for the 2006-2007 fiscal year to implement the active and passive electronic monitoring systems required by this act.

SECTION 23. Section 22 of this act becomes effective July 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1211

Short Title:	Blaire Thompson Drug Dealer Liability Act.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ENACT THE BLAIRE THOMPSON DRUG DEALER LIABILITY ACT IN ORDER TO PROVIDE A CIVIL REMEDY FOR DAMAGES TO PERSONS IN A COMMUNITY INJURED BY AN INDIVIDUAL'S USE OF ILLEGAL CONTROLLED SUBSTANCES AND TO APPROPRIATE FUNDS TO HELP IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5F.

"Blaire Thompson Drug Dealer Liability Act.

"**§ 90-113.85. Title of Article.**

This Article shall be known and may be cited as the 'Blaire Thompson Drug Dealer Liability Act'.

"**§ 90-113.86. Purpose.**

The purpose of this Article is to provide a civil remedy for damages to persons in a community injured by an individual's use of illegal drugs. It establishes a cause of action against drug dealers for damages for monetary, noneconomic, and physical losses incurred as a result of an individual's use of an illegal controlled substance. This Article will shift the cost of the damage caused by the marketing of illegal drugs to those who illegally profit from that market, as well as deter others from entering the illegal drug market by subjecting them to substantial monetary loss. This Article will also provide an incentive for individual users to identify drug marketers and recover from them the costs of their own drug treatment.

"**§ 90-113.87. Definitions.**

(1) 'Illegal controlled substance' means a controlled substance as defined and covered under Article 5 of this Chapter.

(2) 'Individual user' means the individual whose use of an illegal controlled substance that is not obtained directly from, or pursuant to,

a valid prescription or order of a licensed physician or practitioner is the basis of an action brought under this Article.

(3) 'Level one offense' means the illegal possession with the intent to distribute less than four ounces or the illegal distribution of less than one ounce of an illegal controlled substance.

(4) 'Level two offense' means the illegal possession with intent to distribute four ounces or more but less than eight ounces, or the illegal distribution of one ounce or more, but less than two ounces, of an illegal controlled substance.

(5) 'Level three offense' means the illegal possession with intent to distribute eight ounces or more but less than 16 ounces, or the illegal distribution of two ounces or more, but less than four ounces, of an illegal controlled substance.

(6) 'Level four offense' means the illegal possession with intent to distribute 16 ounces or more, or the illegal distribution of four ounces or more, of an illegal controlled substance.

(7) 'Marketing of an illegal controlled substance' means the possession with intent to distribute or distribution of a specified illegal controlled substance which is a violation of Article 5 of this Chapter.

(8) 'Participate in the marketing of an illegal controlled substance' means to distribute, possess with intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. 'Participate in the marketing of an illegal controlled substance' does not include the purchase or receipt of an illegal controlled substance for personal use only.

(9) 'Period of illegal use' means, in relation to the individual user of an illegal controlled substance, the time from the individual's first illegal use of an illegal controlled substance to the accrual of the cause of action.

(10) 'Person' means a natural person, governmental entity, or corporation, partnership, firm, trust, or incorporated or unincorporated association, existing under or authorized by the laws of this State, another state, or a foreign country.

(11) 'Place of illegal activity' means, in relation to the individual user of an illegal controlled substance, each county in which the individual illegally possesses or uses an illegal controlled substance during the period of the individual's use of an illegal controlled substance.

(12) 'Place of participation' means, in relation to a defendant in an action brought under this Article, each county in which the person participates in the marketing of illegal controlled substances during the period of the person's participation in the marketing of illegal controlled substances.

(13) 'Conviction' means a conviction, guilty plea, or plea of nolo contendere and includes being convicted of a violation of a law of any other state or a city or county ordinance.

(14) 'Prior convictions' means felonies and misdemeanors, prior convictions not classified at the time of convictions, federal or out-of-state convictions, and juvenile adjudications if the offenses would be felonies if committed by an adult.

"**§ 90-113.88. Persons who may bring action; persons against whom actions may be brought; damages recoverable.**

(a) Any one or more of the following persons may bring an action for damages caused by an individual's use of an illegal controlled substance against those persons enumerated in subsection (b) of this section:

(1) A parent, legal guardian, child, spouse, or sibling of the individual user;

(2) An individual who was exposed to an illegal controlled substance in utero;

(3) An employer of the individual user;

(4) A medical facility, insurer, employer, governmental entity, or other legal entity that funds a drug treatment program or other employee assistance program for, or that otherwise expends money on, behalf of the individual user; or

(5) A person injured as a result of the willful, reckless, or negligent actions of an individual user.

(b) A person entitled to bring an action pursuant to subsection (a) of this section may seek damages from one or more of the following:

(1) A person who sold, administered, or furnished an illegal controlled substance to the individual user; or

(2) A person who knowingly participated in the marketing of an illegal controlled substance, if all of the following apply:

a. The place of illegal activity by the individual user is within the municipality, county, or unincorporated area of the county in which the defendant's place of participation is situated.

b. The defendant's participation in the marketing of illegal controlled substances was connected with the same type of illegal controlled substance used by the individual user and the defendant has been convicted of an offense for that type of specified illegal controlled substance, which the defendant committed in the same county as the individual user's place of use.

c. The defendant participated in the marketing of illegal controlled substances at anytime during the period in which the individual user used the illegal controlled substance.

(c) As used in subdivision (b)(2) of this section, 'knowingly participated in the marketing of an illegal controlled substance' means an individual was convicted of

possession with the intent to distribute or distribution of an illegal controlled substance in violation of Chapter 90 of the General Statutes.

(d) A person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the use of an illegal controlled substance;

(2) Noneconomic damages including, but not limited to, physical and emotional pain and suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by an individual's use of an illegal controlled substance;

(3) Exemplary damages;

(4) Reasonable attorneys' fees; and

(5) Costs of suit including, but not limited to, reasonable expenses for expert testimony.

"**§ 90-113.89. Actions by individual users; damages recoverable.**

(a) An individual user is entitled to bring an action for damages caused by the use of an illegal controlled substance only if all of the following conditions are met:

(1) Not less than six months before filing the action, the individual personally discloses to a law enforcement agency all of the information known to the individual regarding the individual's sources of illegal controlled substances.

(2) The individual has not used an illegal controlled substance within 30 days before filing the action.

(3) The individual does not use an illegal controlled substance while the action is pending.

(b) The individual user entitled to bring an action under this section may recover only the following damages:

(1) Economic damages including, but not limited to, the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's use of an illegal controlled substance;

(2) Reasonable attorneys' fees; and

(3) Costs of suit including, but not limited to, reasonable expenses for expert testimony.

(c) The individual user entitled to bring an action under this section may seek damages only from a person who distributed, or possessed with the intent to distribute, the illegal controlled substance actually used by the individual user.

"**§ 90-113.90. Assignment of cause of action.**

A cause of action authorized by this Article shall not be assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

"**§ 90-113.91. Responsibility for damages; level of offense.**

Any person whose participation in the marketing of illegal controlled substances constitutes any of the following levels of offense shall be subject to a rebuttable presumption of responsibility in the following amounts:

(1) For a level one offense, twenty-five percent (25%) of the damages;

(2) For a level two offense, fifty percent (50%) of the damages;

(3) For a level three offense, seventy-five percent (75%) of the damages; or

(4) For a level four offense, one hundred percent (100%) of the damages.

"**§ 90-113.92. Multiple parties to action; relief according to respective liabilities.**

(a) Two or more persons may join in one action under this Article as plaintiffs if their respective actions have at least one market for illegal controlled substances in common and if any portion of the period of use of an illegal controlled substance is concurrent with the period of use of an illegal controlled substance for every other plaintiff.

(b) Two or more persons may be joined in one action under this Article as defendants if those persons are liable to at least one plaintiff.

(c) A plaintiff need not participate in obtaining, and a defendant need not participate in defending, against all of the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

"**§ 90-113.93. Standard of proof; effect of conviction for distribution of controlled substance.**

(a) Proof of liability in an action brought under this Article shall be by a preponderance of the evidence.

(b) A person against whom recovery is sought who has been convicted of the distribution of an illegal controlled substance under Chapter 90 of the General Statutes or under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801, et seq., is precluded from denying participation in the marketing of an illegal controlled substance.

"**§ 90-113.94. Defense; liability of law enforcement officer or agency.**

(a) It is a defense to any action brought under this Article that the person who possessed with the intent to distribute or distributed an illegal controlled substance did so under the authority of law as a licensed physician or practitioner, as an ultimate user of the illegal controlled substance pursuant to a lawful prescription, or as a person otherwise authorized by law.

(b) A law enforcement officer or agency, the State, or any person acting at the direction of a law enforcement officer or agency of the State is not liable for participating in the marketing of an illegal controlled substance if the participation is in furtherance of an illegal investigation.

"**§ 90-113.95. Seizure of property; injunctions.**

A person authorized to file an action under this Article may seek a seizure or injunction or other remedial action against all assets of a defendant sufficient to satisfy a potential award, except an asset named in or seized pursuant to a forfeiture action by the State or federal agency before a plaintiff commences an action pursuant to this Article, unless the asset is released by the agency that seized it.

"**§ 90-113.96. Statute of limitations.**

(a) Except as otherwise provided in this section, a cause of action under this Article shall not be brought more than two years after the cause of action accrues. A cause of action accrues under this Article when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm.

(b) For a plaintiff, the statute of limitation under this section is tolled while the individual potential plaintiff is incapacitated by the use of an illegal controlled substance to the extent that the individual cannot reasonably be expected to seek recovery under this Article or as otherwise provided by law. For a defendant, the statute of limitation under this section is tolled until six months after the individual potential defendant is convicted under Chapter 90 of the General Statutes or as otherwise provided by law.

"**§ 90-113.97. Continuance pending completion of criminal investigation.**

On motion by a governmental entity involved in an investigation or prosecution involving an illegal controlled substance, an action brought under this Article shall be continued until the completion of the criminal investigation or prosecution that gave rise to the motion for a continuance of the action."

SECTION 2. The Administrative Office of the Courts shall develop forms needed to a file a cause of action under this Article and provide training to judicial personnel.

SECTION 3. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of fifty thousand dollars ($50,000) to be used to develop forms, to train judicial personnel, and to otherwise implement this Article.

SECTION 4. This act becomes effective December 1, 2006.

#1.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-1-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Mary Thomsen	REBIC
Rebekah Gancarovs	ACLU-NC
Bryce Ball	Fiscal Research
Julian Mann	OAH
Monique Johnson-Hostler	NCCADA
Tim Moore	NC DOC
Mildred Spearman	NCDOC
Martha Harris	UNC-IOG
Barbara Permenter	Sen. Bozeman
Laura Dalbom	Sen. Bozeman
Selena Bernier	Child Fatality Task Force

#2

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-1-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Mark Lanier	UNCW
Will Polk	NCDOJ
Keith Thompson	BLAIRE THOMPSON'S FATHER
Rachel Thompson	" " Mother
Wendy Jones	(Blaire Thompson) Bill Drug Dealer Liability Act
Kristin Kelly	gov. office
Paul Valone	Grass Roots North Carolina
JOHN LANGREETH	GRASS ROOTS NC
Peg Dorer	NC Conference of DAs
Charlie Rooce	NC Conference of DA's
Eddie Caldwell	NC Sheriffs' Assn.
Evelyn Hendrickson	DHR

#3

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-1-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
AL DEITCH	DOA/YATO
BRUCE THOMPSON	PARKER POE
John Madler	NC Sentencing Commission
[signature]	ACPSS
Joanne Stevens	NCNA
Julia Aucoin	NCNA
[signature] Bob Brooks	NC State Board of CPA Exam

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 6, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1048	Governor's DWI Task Force Recommendations.	Representative Hackney

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 6, 2006

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:04 a.m. with seventeen members present. He introduced Pages Beau Brooks from Waxhaw, NC, Nathan Honaker, Bradford Hill, and Hampton Story, all from Raleigh, NC, Lynwood Smith, from High Point, Wiley Narron from Smithfield, NC Josh Ludwig from Wake Forest, and Josh Torkinston from Charlotte, NC.

HB- 1048 (Governor's DWI Task Force Recommendation) Committee Substitute was introduced by Senator Clodfelter. He stated that the bill would not be voted on at this time. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Representative Joe Hackney explained that the bill is based upon the findings of the Governor's Task Force on Driving While Impaired, provides measures relating to DWI arrest. enforcement education and training. The measures have varying effective dates. See attached Bill Summary for further information. Representative Joe Hackney thanked the Governor's Task Force Co-Chair, Mr. Jim Harden, and the members of the committee for the report that was put together. Senator Tony Rand thanked Rep. Hackney for his work on the bill. And spoke on the work done by the Task Force. Senator Clodfelter asked staff attorney, Hal Pell to explain the different Parts and Sections of the Committee Substitute. Mr. Pell explained some of the Parts and Sections, but due to lack of time, Senator Clodfelter stated that the remaining Parts and Sections would be explained at a the next meeting. Senator Phillip Berger had a question on Part I of the bill. Rep. Joe Hackney answered the question. Senator's Charlie Albertson, Peter Brunstetter, Richard Stevens, Tony Rand, David Hoyle, Vernon Malone and Jerry Tillman had questions on Part II of the bill. Rep. Hackney answered their questions. Senator Clodfelter stated that discussion on this part of the bill would be stopped at this point, to be taken up again at the next meeting. Senator's Martin Nesbitt, Peter Brunstetter, Phillip Berger and David Hoyle had questions on Section 20-38.5 of the bill. Senator Clodfelter and Rep. Hackney answered the questions. Senator Andrew Brock had questions on Part 3 of the bill. Senator Rand answered the question Mr. Ike Avery, member of

Governor's Task Force spoke on Part 3 of the bill and answered a question from Senator Rand. Part 5 of the bill was explained by Mr. Pell, and Senator Clodfelter stated that discussion on this part would continue at the next meeting.

The meeting was adjourned at 10:51 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

HOUSE BILL 1048 PCS:
DWI Task Force Recommendations

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 1, 2006
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	PCS to Third Edition H1048-CSRK-40		Committee Co-Counsel

SUMMARY: ***This bill, based upon the findings of the Governor's Task Force on Driving While Impaired, provides measures relating to DWI arrest, enforcement, education, and training. The measures have varying effective dates.*** ***[ATTACHMENT -- Bill and PCS Comparison]***

BILL ANALYSIS:

PART I – REGULATING MALT BEVERAGE KEGS

Section 1: Amends the law to require a purchase-transportation permit for the purchase and off-premises transportation of a keg of malt beverage. Retailers of keg malt beverages would be authorized to issue purchase-transportation permits, and would be required to maintain sales records for one year.

Section 2: Conforming changes.

PART II – MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

Section 3: Amends the statute regulating impaired driving checkpoints. The provision

- Creates a single "checking station" or "roadblock" instead of "impaired driving" checkpoints and "driver's license" checkpoints. Impaired driving checkpoints are statutorily regulated; however, the requirements for driver's license checkpoints are derived from case law.
- Requires the law enforcement agency (LEA) to designate in advance the pattern for stopping vehicles and for the production of a driver's license, a registration card, or insurance information. An individual officer would not have the discretion to determine which drivers would be required to produce a driver's license, registration, or insurance information.
- Requires that at least one LEA vehicle have its blue lights in operation.
- If an officer determines that the driver has previously consumed alcohol, or has an open container, the officer may conduct an alcohol screening test.
- Provides that checkpoints should be random and not repeatedly located in the same location.

Part III – PROVIDING FOR IMPLIED CONSENT PRETRIAL AND COURT PROCEEDINGS

Section 4: This Part would create a new Article in Chapter 20 to provide pretrial procedures for implied consent offenses. An "implied consent offense" is defined by statute as an offense involving impaired driving or an alcohol-related offense subject to the procedures in N.C.G.S § 20-16.2, Implied Consent to Chemical Analysis.

§ 20-38 provides that the procedures are mandatory for the investigation and processing of an implied-consent offense. The trial procedures apply to any implied-consent offense litigated in District Court.

§ 20-38.1 provides for extraterritorial jurisdiction for officers who are seeking evidence of a driver's impairment in the course of investigating an implied consent offense or vehicle crash.

§ 20-38.2 Upon an arrest, a law enforcement officer

- must inform the person why they're being arrested;
- may take the person for a chemical analysis, inside or outside of their personal jurisdiction, at the request of any law enforcement officer, and for any evaluation to determine the extent or cause of impairment;
- may take the person to some other location to be identified, to complete a crash report, or for some other lawful purpose;
- may take photographs and fingerprints in accordance with law; and
- must take the person before a judicial official for an initial appearance after the completion of all other procedures.

§ 20-38.3 governs the initial appearance before a magistrate. The provisions modify the current procedures in effect for an appearance before a magistrate. The modifications include

- A requirement that, to the extent practicable, the magistrate is to be available at locations other than the courthouse for an initial appearance.
- If probable cause is found, a requirement that the magistrate consider whether the provisions of § 15A-534.2 should be invoked.

§ 20-38.4 requires the Chief District Court Judge, the Department of Health and Human Services (DHHS), the District Attorney and the Sheriff to

- Establish written procedures for attorneys and witnesses to have access to the chemical analysis room.
- Approve the location of written notice of implied consent rights in the chemical analysis room.
- Approve a procedure to allow a person who is denied pretrial release to have access to outside chemical analysis.

Initially, the Department of Transportation would be required to post signs that explain to the public how to access the chemical analysis room. The county would then be required to maintain any signs for county buildings and the courthouse. If the analysis instrument is in a State or municipal building, then the head of the highway patrol for the county, or the police chief, will be responsible for signs and access instead of the Sheriff.

§ 20-38.5 provides for motions and trial procedures in district court:

- Motions to suppress and dismiss (except for insufficiency) must be made prior to trial.
- Pretrial motions must be in writing and delivered to State at least seven days before any hearing.

- The judge may summarily grant or deny a motion to suppress, or hold a hearing. Findings of fact and conclusions of law must be in writing.

§ 20-38.6 provides for appeals from district court:

- The State may appeal a pretrial suppression of evidence or dismissal of charges to superior court for a *de novo* hearing.
- The defendant may appeal denial of a pretrial motion upon conviction.

Any conviction that is appealed to superior court may not be remanded back to district court unless the prosecutor and superior court consent. The defendant's decision to seek a trial de novo results in a vacation of the sentence. Upon withdrawal of the appeal or remand by the Superior court to the district court, the district court shall hold a new sentencing hearing and take into account any new convictions. The district court shall delay sentencing until any pending charges are resolved.

Part IV -- ALLOWING OPINION TESTIMONY BY DRUG RECOGNITION AND ACCIDENT RECONSTRUCTION EXPERTS, AND ADMISSION OF HGN TESTS.

Section 5. This Part amends the State Evidence Code by adding a new Rule that:

- Allows the admission of the results of a Horizontal Gaze Nystagmus (HGN) Test into evidence. Opinion testimony by a person who has completed HGN training would be admissible on whether the results are consistent with a chemical analysis, or consistent with a person who is under the influence of a particular type or class of impairing substances.
- Allows a Drug Recognition Expert (DRE) to give opinion testimony that
    - A person is was under the influence of one or more impairing substances
    - The impairing substance belongs to a category of impairing substances

  The opinions are admissible if the DRE holds a current certification as a DRE, issued by the Department of Health and Human Services (DHHS).
- Allows an accident reconstruction expert to give an opinion as to the speed of a vehicle--even if the expert did not see the vehicle moving--if the expert has
    - performed a reconstruction of a crash, or
    - has reviewed the report of investigation

The new Rule provides that it shall not be construed to prohibit cross-examination of any person expressing an opinion, and the basis for their opinion. Opinion testimony that is otherwise admissible is not prohibited by the new Rule.

The GTF Report notes that the DRE program began in California, due to drivers who had less than .08 BAC, but were impaired by something other than alcohol. The training is highly technical, and involves recognition of signs of impairment, including behavior, eye movement, and performance on standard field sobriety tests. The Report also notes that HGN is "among the most effective sobriety tests that are administered by officers."

In North Carolina, whether a scientific method is accepted as the basis for admission of evidence depends upon the reliability of the scientific method and not its popularity within a scientific community. "[W]hen no specific precedent exists, scientifically accepted reliability justifies admission

of the testimony ... and such reliability may be found either by judicial notice or from the testimony of scientists who are expert in the subject matter, or a combination of the two." *State v. Bullard*, 312 N.C. at 148.

The GTF Report states that "most states allow crash reconstructionists to give an opinion of speed at time of impact" and that the "physics of a crash and the mathematical formulas are generally accepted in the scientific community."

Part V — ALCOHOL SCREENING DEVICES

Section 6:

Makes technical changes and changes the current law to allow screening tests as evidence in court and administrative proceedings.

Part VI – CLARIFICATION OF IMPAIRED DRIVING OFFENSES

Section 7:

Makes technical corrections and clarifies that "public vehicular areas" include business property, whether the business is open or closed.

Sections 8 and 9:

Clarifies the *per se* impaired driving offense for non-commercial and commercial drivers. The Task Force found that some judges do not accept the Intoxilyzer reading as sufficient evidence of impairment, and have required additional evidence of impairment. The statute is amended to provide a description of the State's burden, and the opportunity for rebuttal.

Section 10:

Creates a deferred prosecution option for persons charged with driving under the age of 21 after having consumed any amount of alcohol. This allows the person to obtain a dismissal after completing an assessment and treatment or education, a period of non-operation, and doing community service, as well as meeting some additional conditions.

Section 11:

Amends the Habitual DWI statute to apply to any person who has 3 previous DWI convictions within a 10 year period. Currently, the law applies to anyone who has 3 previous DWIs within a 7 year period.

Section 12:

Clarifies that required procedures and evidentiary provisions applicable to chemical analyses apply to the immediate license revocation statute.

PART VII – FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

Section 13:

Creates three new offenses: Felony Serious Injury by Vehicle, Aggravated Felony Death by Vehicle, and Aggravated Felony Serious Injury by Vehicle.

- Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired is guilty of a Class F felony.
- Aggravated Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class E felony.

- Aggravated Felony Death -- A person who unintentionally causes the death of another while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class D felony.

Under current law, unintentionally causing a death (not impaired) while violating a statute or ordinance is a Class 1 misdemeanor. The bill would increase the penalty for unintentionally causing death while impaired from a Class G felony to a Class E felony.

The bill also creates the offense of "Repeat Felony Death by Vehicle." A person who has a previous conviction for causing a death while impaired, and is convicted a second time for a felony death by vehicle, is subject to punishment under the second degree murder statute (Class B2 felony).

Part VIII – CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT

Section 14

This part adds clarifying language to G.S. 20-16.2. The part

- Allows any law enforcement officer to perform the chemical analysis (not just the arresting officer).
- Changes the standard of review by the superior court when a license revocation for refusal to submit to chemical analysis is appealed. Currently, the review is a *de novo* review, meaning the superior court hears all the evidence again. This part would change the review to limit it to whether there is (i) sufficient evidence in the record to support the Commissioner's findings of fact, (ii) whether the conclusions of law are supported by the findings of fact and (iii) whether the Commissioner committed an error of law in revoking the license.
-

Part IX – ADMISSIBILITY OF CHEMICAL ANALYSES

Section 15

This part

- Amends the statute governing admissibility of chemical analyses to allow the court to take notice of the DHHS rules and persons authorized to administer the analyses. DHHS is required to post on a webpage and file in each county a list of all persons who have a permit authorizing them to perform chemical analyses.
- Provides for procedures for establishing the chain of physical custody or control of blood and urine samples. Authorizes the admission of tests on blood or urine if submitted on a form approved by the Attorney General without further authentication. This part restricts the issuance of a subpoena for the chemical analyst unless the subpoena is found to be necessary by the court.
- Provides for a hearing on the admissibility of evidence if the defendant notifies the State at least five (5) days before trial in the superior court division or an adjudicatory hearing in juvenile court.
- Provides that a law enforcement officer may compel, without a court order, a person to provide a blood or urine sample from a person who has refused a test if circumstances require that a test be conducted without a warrant.

Part X – IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

Section 16

- Requires any healthcare provider who is providing medical treatment to a crash victim to provide a law enforcement officer with the crash victim's name, location, and whether the person appears to be impaired.
- Requires the healthcare provider to allow an investigating officer access to visit and interview the person upon request.
- Authorizes an investigator to obtain a certified copy of medical records if they obtain a search warrant or an order specifying the records.
- Provides that certified copies of relevant health information are admissible in any hearing or trial without further authorization.

Section 17

Provides conforming language in the evidence code to reflect the changes set forth in Section 16.

Part XI – PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

Section 18

Amends the current provision which requires a prosecutor to document the reasons behind the reduction or dismissal of impaired driving or driving while license revoked for impaired driving charges.

- Requires the prosecutor to sign a written explanation on an approved form containing the items listed in the statute. The form must be sent to the head of the law enforcement agency employing the charging officer, to the district attorney who employs the prosecutor, and filed in the court file.
- Requires the Administrative Office of the Courts to electronically record the information, and make it available upon request.

Section 19.1

- Requires the clerk of court to keep specific file data on persons charged with impaired driving offenses, including:
    - reasons for dismissal, continuances,
    - suppression of evidence,
    - reduction of charges, or waivers of fines;
    - punishments;
    - compliance with orders; and
    - subsequent court proceedings to enforce sentences or payments of fines, costs, and fees.

Section 19.2

Requires the AOC to maintain the data described in Section 1, and provide an annual report (by calendar year) to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime

Control and Juvenile Justice Oversight Committee. The report is to include the amount of fines, costs, and fees ordered at disposition, and defendants' compliance with sanctions. The AOC is charged with insuring public access to the information by posting it on the agency's internet page, and making the report available to the public at no cost.

Part XII – NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED

Section 20

This section provides that the Division of Motor Vehicles may prove notice of personal delivery, or by mail, by making a notation in its records. A certified copy of the Division's records would be admissible in any court or administrative agency proceeding as proof of notice.

Section 21

Under this amendment, a person is also guilty of a Class 1 misdemeanor if

- The Division has sent a notice of revocation of license for driving while impaired, and the person drives on a highway with a revoked license.
- The person fails to appear for two years from the charge date if charged with an implied consent offense.

Upon conviction, the person license is revoked an additional year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The bill provides that if the license was revoked for a reason stated above, the person may only apply after one year. If a person's license was revoked due to one of the specified offenses, a conditional restoration requires the person to obtain a substance abuse assessment (and complete any required education or treatment), and show proof of financial responsibility.

The Division may also require the installation of ignition interlock on vehicles, and may cancel conditionally restored licenses if any conditions of restoration are violated. The Division may also cancel vehicle registrations and require the surrender of cards and plates.

PART XIII – MODIFYING CURRENT PUNISHMENTS

Section 22

In *Blakely v. Washington,* decided by the United States Supreme Court in June 2004, the Court held that the facts supporting the imposition of a sentence longer than the statutory maximum must be found by a jury beyond a reasonable doubt, or be admitted by the defendant. In *State v. Allen*, the North Carolina Court of Appeals, in applying Blakely under North Carolina's Structured Sentencing Act, held that the existence of aggravating factors that will increase a felony sentence beyond that which is permitted under the presumptive range must be found by a jury beyond a reasonable doubt, or be admitted by the defendant.

Chapter 20 also includes sentencing provisions that rely on the proof of aggravating factors. Consequently, based upon the holding in *Blakely*, the amendments in these sections provide the procedures for holding a sentencing hearing in Superior Court. A jury would find the aggravating factors necessary for enhanced punishment. The judge is not required to allow proof of aggravating factors to the jury if the defendant stipulates to their existence.

The procedures allow for a defendant to admit to the aggravating factor only, or plead guilty only to the charge. A judge may find the existence of prior convictions without a jury determination. The State

must provide notice of its intent to use one or more aggravating factors if the defendant appeals to Superior court.

The bill provides that a defendant sentenced to a term of imprisonment that is 48 hours or more must serve the term hour for hour. Consequently, a defendant arriving at a confinement facility on a Friday evening would not be eligible for release on Sunday morning, although two "days" have passed.

A defendant reporting to jail that shows positive on an alcohol screening test would forfeit any option to serve confinement time on weekends.

Section 23

Requires the clerk of court to keep for a minimum of ten years all records relating to persons charged with impaired driving offenses. Prior to destroying the record, the clerk is required to record the data specified in the provision.

Section 24

Repeals revocation and notice procedures that are superseded by other provisions in the bill.

PART XIV – ILLEGAL CONSUMPTION UNDER 21 AND ADMISSIBILITY OF THE RESULTS OF AN ALCOHOL SCREENING DEVICE

Section 25

The section makes it illegal for a person less than 21 years of age to consume any alcoholic beverages. The exceptions are:

- during the course of treatment by a licensed physician, druggists, or dental surgeons for medicinal or pharmaceutical purposes, or by medical facilities established and maintained for the treatment of addicts;
- for sacramental purposes by any organized church or ordained minister; and
- under the direct supervision of an instructor during a culinary class that is part of a curriculum at an accredited college or university.

The bill authorizes a law enforcement officer to administer a screening test to a person less than 21 years of age if there is probable cause that the person has consumed alcohol. The test result would be admissible in any court or administrative proceeding.

PART XV – DWI DEFENDANTS ASSIGNMENT TO COMMUNITY SERVICE PAROLE OR HOUSE ARREST

Section 26

This section requires that any impaired driving offender that has completed recommended treatment or a training program, and is not being paroled to a residential treatment program, shall as a condition of parole, be placed on

- community service parole, or
- house arrest with electronic monitoring.

PART XVI – PREVENT NONCOMPLIANT PERMIT HOLDERS FROM SWITCHING PERMITS

Section 27

The bill provides that a permittee may not employ someone who has been a permit holder and who has had their permit revoked within three years. This is designed to prevent a current permit holder who becomes ineligible from using a surrogate to be the designated permit holder, while remaining in charge of the business.

PART XVII – DWI TRAINING FOR JUDGES

Section 28

Requires all justices and judges in the General Court of Justice to receive a minimum of two hours of continuing judicial education, every two years, on DWI issues.

PART XVIII – REQUIRE DA SIGNATURE FOR A DISTRICT COURT MOTION FOR APPROPRIATE RELIEF

Section 29

The section provides that a motion for appropriate relief (MAR) may not be granted without the signature of the District Attorney. An MAR is a pleading by the defendant seeking relief from a judgment of the court. If the defendant gives notice by oral motion in court, or written notice to the District Attorney, then the court may grant the motion if the DA has not signed 10 days after receipt of notice.

PART XIX – EFFECTIVE DATE

Section 30

The requirement that the AOC electronically record certain data (see Section 18, above) becomes effective after the next rewrite of the Superior Court Clerks System. Section 22 is effective when it becomes law. The remainder of the act becomes effective on December 1, 2006, and applies to offenses committed on or after that date.

H1048-smrk-csrk-001

Summary contribution by Susan Sitze, Staff Attorney.

ATTACHMENT TO
SUMMARY, H1048-CSRK-40
Senate Judiciary I
June 1, 2006

COMPARISON -- HOUSE BILL 1048 AND SENATE BILL 1048 PCS

Subject Area	House Bill 1048	Senate PCS
Regulating Kegs	Sections 1 & 2	Sections 1 & 2
Checking Stations	Sec. 3 – no written plan if a written policy	Sec. 3 – (1) no req.'ment for a written plan or policy; (2) deletes "near a business selling alcohol" on repeated checkpoints and provides that repeated checkpoints in the same location or proximity should be avoided.
Implied Consent Procedures	Section 4	Section 4 – (1) removes out-of-State application in 20-38.1 and gives State-wide jurisdiction (2) Adds that Dist. Ct. sentence is vacated on appeal to Sup. Ct.
Allow Testimony/Opinion	Section 5	Section 5 (1) removes "in accordance with training" after test name.

Alcohol Screening Devices	Section 6	Section 6
Clarification of Impaired Driving Offenses	Sections 7 – 14 (1) removes "by the public" for regulated areas (2) creates a "third" method of proving DWI (3) removes exemption for horses, bicycles, or lawnmowers (4) changes .04 level for DWI for commercial vehicles to 0.00 (5) adds language re: GVW for commercial vehicles	Sections 7 – 12 (1) retains "by the public" for regulated areas (2) no third method—clarifies per se .08 burden and provides for rebuttal (3) keeps exemption for horses and bicycles (4) keeps .04 level for commercial vehicles (5) no provision on GVW commercial vehicles
Felony Death by Vehicle; Felony Serious Injury by Vehicle	Section 15 – (1) makes felony death by vehicle a Class D felony (2) makes felony serious injury by vehicle a Class E felony	Section 13 – (1) makes felony death by vehicle a Class E felony (2) makes felony serious injury by vehicle a Class F felony (3) adds aggravated offenses (4) adds repeat felony death offense
Clarify Implied Consent Law	Section 16	Section 14
Admissibility of Chemical Analysis	Section 17	Section 15 (1) adds language to provision allowing officer to compel blood/urine sample
Improved Access to Medical Records	Section 18	Sections 16 and 17 (1) adds provision exempting information from any applicable privilege

Notice Procedure and Driving While License Revoked	Sections 20 and 21	Sections 20 and 21 (1) re-drafts req.'ments for cond. license where revoked under specified sections (2) Identifies vehicles subject to cancellation of registration and plate surrender
Modify Punishments	Sections 22 -- 24	Sections 22 -- 24
Illegal consumption under 21 years	Section 25 and 26	Section 25 (1) adds technical addition for 19 and 20 year olds
Parole of DWI defendants	Section 27	Section 26
Prevent Switching Names of Permit Holders		Section 27
DWI Training for Judges		Section 28
Require DA signature on MAR filing		Section 29
Effective Date	Section 28	Section 30

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1048

Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1048-CSRK-40 [v.24]

6/1/2006 2:09:05 PM

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-403 reads as rewritten:

"(a) Amounts. – With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination within North Carolina indicated on the permit at one time the following amount of alcoholic beverages:

(1) A maximum of 100 liters of unfortified wine;

(2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two ~~combined; or~~ combined;

(3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage ~~permittee.~~permittee; or

(4) A keg of malt beverage for off-premises consumption, when purchased by a person who is not a permittee.

(b) Issuance of Permit. – A purchase-transportation permit may be issued by:

(1) The local board chairman;

(2) A member of the local board;

(3) The general manager or supervisor of the local ~~board; or~~board;

(4) The manager or assistant manager of an ABC store, if he is authorized to issue permits by the local board ~~chairman.~~chairman; or

(5) The retailer of a keg of malt beverage for off-premises consumption. A permit issued under this subdivision is only valid for kegs of malt beverage sold by that retailer.

(c) Disqualifications. – A purchase-transportation permit shall not be issued to a person who:

(1) Is not sufficiently identified or known to the issuer;

(2) Is known or shown to be an alcoholic or bootlegger;

(3) Has been convicted within the previous three years of an offense involving the sale, possession, or transportation of nontaxpaid alcoholic beverages; or

(4) Has been convicted within the previous three years of an offense involving the sale of alcoholic beverages without a permit.

(d) Form. – A purchase-transportation permit shall be issued on a printed form adopted by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(e) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the issuing person, one by the purchaser, and one by the store from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request. A permit for the purchase and transportation of spirituous liquor may be issued only by an authorized agent of the local board for the jurisdiction in which the purchase will be made.

(f) Time. – A purchase-transportation permit is valid only until 9:30 P.M. on the date of purchase, which date shall be stated on the permit.

(g) Special Occasion Purchase-Transportation Permit. – When a person holds a special occasion for which a permit under G.S. 18B-1001(8) or (9) is required, the purchase-transportation permit issued to him may provide for the storage at and transportation to and from the site of the special occasion of unfortified wine, fortified wine, and spirituous liquor for a period of no more than 48 hours before and after the special occasion. The purchase-transportation permit authorizes that person to transport only the amounts of those alcoholic beverages authorized by subsection (a). The Commission may adopt rules to govern issuance of these extended purchase-transportation permits.

(h) Any retailer that issues a purchase-transportation permit pursuant to subdivision (b)(5) of this section shall retain the records of all permits issued for at least one year. "

SECTION 2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg of malt beverages for off-premises consumption, the permit required by G.S. 18B-403(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~kegs for on-premises consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 3. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking Stations and Roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

(2) Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. The ~~plan~~ pattern need not be in writing and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test~~ to produce drivers license, registration or insurance information.

(3) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.1. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.2. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.3. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested. If the evidence would lead a reasonable person to believe that a crime has been committed by the person charged, the magistrate shall find probable cause.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"**§ 20-38.4. Facilities.**

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county or the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the above functions listed in subdivisions (a)(1) and (a)(2) of this section.

"**§ 20-38.5. Motions and district court procedure.**

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.6. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions, and if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 5. Article 7 of Chapter 8C of the General Statutes is amended by adding a new rule of evidence to read:

"**Rule 707. Drug recognition expert and HGN testimony and opinion as to speed of an accident reconstruction expert.**

(a) Results of Horizontal Gaze Nystagmus (HGN) Test. – The results of a horizontal gaze nystagmus (HGN) test are admissible into evidence, and the opinion of the analyst is admissible as to whether the results are consistent with a chemical analysis or consistent with a person who is under the influence of a particular type or class of impairing substances, when the HGN test is administered by a person who has successfully completed training in HGN.

(b) Opinion of Drug Recognition Expert (DRE). – The opinion of a DRE that a person is under the influence of one or more impairing substances, and the opinion as to the category of such impairing substance or substances is admissible in any court or administrative hearing when the DRE holds a current certification as a DRE issued by the Department of Health and Human Services.

(c) Opinion as to Speed of a Vehicle. – Any person who is found by a court to be an expert in accident reconstruction who has performed a reconstruction of a crash or has reviewed the report of investigation may give an opinion as to the speed of a vehicle even if the expert did not actually observe the vehicle moving.

Nothing contained in this Rule shall be construed to prohibit cross-examination of any person as to their opinions and the basis for the opinions and shall not limit other opinion testimony otherwise admissible under the rules of evidence or court decision."

PART V. ALCOHOL SCREENING DEVICES

SECTION 6. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or
b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, and is admissible in a court, or an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her blood previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~-results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 7. 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:

...

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4."

SECTION 8. G.S. 20-138.1(a) reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The State has met its burden of proof for a violation of this subdivision if, at any relevant time after the driving, the defendant submitted to a chemical analysis and the result was 0.08 or more. A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result as rebuttal evidence that the person

had, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle.

SECTION 9. G.S. 20-138.2(a) reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The State has met its burden of proof for a violation of this subdivision if, at any relevant time after the driving, the defendant submitted to a chemical analysis and the result was 0.04 or more. A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result as rebuttal evidence that the person had, at a relevant time after driving, an alcohol concentration of 0.04 or more.

SECTION 10. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives

with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section ~~is a Class 2 misdemeanor.~~ shall be punished pursuant to G.S. 20-179. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

(c1) Notwithstanding any other provision of law, if a person either pleads or is found guilty of a violation of this section, a court may, with the defendant's consent (i) withhold entry of judgment and defer further proceedings, and (ii) place the defendant on probation for a minimum of one year upon such reasonable terms and conditions as it may require. Action may only be taken under this subsection if all of the following conditions are met:

(1) The defendant has no pending charges under Chapters 18B, 20, 14, or 90 of the General Statutes.

(2) The defendant has no prior convictions for a violation of this section or of Chapter 18B of the General Statues.

(3) The defendant has no prior convictions for an offense involving impaired driving under any federal or other States' statutes relating to the substances or paraphenelia listed in Articles 5, 5A, or 5B of Chapter 90 of the General Statues.

(c2) Notwithstanding any other provision of law, a court shall impose, at a minimum, all of the terms and conditions listed in this subsection for any defendant placed on probation pursuant to subsection (c1) of this section. The defendant shall:

(1) Obtain a substance abuse assessment within 30 days and comply with education or treatment requirements recommended by the assessment.
(2) Not operate a motor vehicle for at least 90 days.
(3) Perform 50 hours of community service and pay the community service fee.
(4) Submit at reasonable times to warrantless searches by a probation officer of his or her person, vehicle, and premises including drug and alcohol screening and testing and pay the costs of such screening and tests.
(5) Not possess or consume any alcoholic beverage or controlled substance unless the controlled substance is lawfully prescribed to the person.
(6) Pay court costs and all fees.
(7) Not violate any law of this or any other state or the federal government.
(8) Remain gainfully employed or in school as a full-time student as determined by the probation officer.
(9) Not violate any other reasonable condition of probation.

Upon violation of any term or condition of probation ordered pursuant to subsection (c1), or of this subsection, the court may enter an adjudication of guilt and proceed as otherwise provided.

(c3) Upon fulfillment of the terms and conditions of probation ordered under subsections (c1) or (c2) of this section, the court shall discharge the defendant and dismiss the proceedings against him if all of the following conditions are met:

(1) The defendant does not have any pending charges for violating any law of this State.
(2) The defendant has not violated any laws of this State, including infractions.
(3) The defendant has not been convicted of violating any federal or other States' statutes that are substantially similar to provisions in Chapters 18B, 20, 14, or 90 of the General Statutes.

Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions.

(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20 179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.
(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20 179.3, other than the requirement in G.S. 20 179.3(b)(1)c. G.S. 20 179.3(e) shall not apply. All other terms, conditions, and restrictions provided

for in G.S. 20 179.3 shall apply. G.S. 20 179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

SECTION 11. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 12. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 13. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if ~~he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a1)(2) is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if ~~he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) the commission of the offense in subdivision (a2)(2) is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a3)(2) is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a4)(2) is the proximate cause of the serious injury, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a5)(2) is the proximate cause of the death, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5), and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW

SECTION 14. G.S. 20-16.2 reads as rewritten:

"§ 20-16.2. **Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more, ~~0.04~~ 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

(5) ~~The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures,~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person is notified of his or her~~ of these rights. You must take

the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement officer, officer or chemical analyst, ~~in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and either may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~ officer ~~must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging~~ officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~ officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~ shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
a. Other than by conviction; or
b. By a conviction of impaired driving under G.S. 20 138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20 179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20 179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A 133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A 41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20 17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20 139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered.

Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 15. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if~~ Preventive ~~Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the

two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the type of analyses that they can

perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of

superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall allow the person access to a telephone to attempt to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under this subsection by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The

criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 16. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 17. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 18. G.S. 20-138.4 reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.**

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum,

(1) The alcohol concentration or the fact that the driver refused.

(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.

(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records,

(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.

(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.

(6) The name and agency of the charging officer and whether the officer is available.

(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 19.1. G.S. 7A-109.2 reads as rewritten:

"**§ 7A-109.2. Records of dispositions in criminal ~~cases.~~cases; impaired driving integrated data system.**

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;

(2) The reasons for any pretrial dismissal by the court;

(3) The reasons for any continuances granted in the case;

(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;

(5) The reasons for any suppression of evidence;

(6) The reasons for dismissal of charges at trial;

(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;

(8) The amount and reason for waiving or reduction of any fee or fine;

(9) The time or other conditions given to pay any fine, cost, or fees;

(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;

(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and

(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees.

SECTION 19.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-346.3. Impaired driving integrated data system report.**

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State, by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction, amount collected and amount still owed,, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR.

SECTION 20. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~ a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notices. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose

indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested..

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 21. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~ year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving

revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) the person violates any condition of the restoration;

(2) the person is convicted of any moving offense in this or another state;

(3) the person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 22. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of the subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating Factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned.

The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the Jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury Selection. -- A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court

(1) Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant Pleads Guilty to the Charge Only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.
(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he ~~must~~ shall note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers

license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

~~(3) Not operate a motor vehicle for a term of 60 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

~~(3) Not operate a motor vehicle for a term of 30 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment or ~~community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (s)(2), the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail, if

(i) the defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

(ii) the defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts."

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 23. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 24. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 25. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) Purchase or Possession. – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

. . .

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year old. A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8) or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 26. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.
(4) Support his dependents and meet other family responsibilities.
(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.
(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.
(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.
(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.
(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.
(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.
(10) Promptly notify the parole officer of any change in address or employment.
(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.
(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.
(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.
(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.
(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to

pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 27. G.S. 18B-1003(c) reads as rewritten:

(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;

(3) Convicted of an alcoholic beverage offense within two years; or

(4) Convicted of a misdemeanor controlled substances offense within two years.

(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 28. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judges shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 29. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;

2. Before the judge who presided at trial;

3. Before the end of the session if made in superior court; and

4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in District Court without the signature of the District Attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate belief without the District Attorney's signature 10 business days after the District Attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

PART XIX. EFFECTIVE DATE

SECTION 30. The requirement that the Administrative Office of the Courts electronically record certain data contained in subsection (c) of G.S. 20-138.4, as amended by Section 18 of this act, becomes effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-6-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Debbie Dawes	Innovation Research + Training
Jim Deaton	INSTITUTE GOV.
IKE AVERY	Avery PC PO Box 10174 27605
Charlie Reece	NC Conference of DA's
Peg Dorer	Conference of DAs
Greg Butler	Conference of DA's
Cathy Matthews	DMV
Matt Osborne	AOC
Glenn Mills	DCC
AL EISELE	DHHS, FTA
EDDIE BUFFALOE	DHHS, FTA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-6-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Epperson	Governor's office
Ruth Little	AOC
Janet Green	AOC
Kerstin W. Sutton	NCATL
CPM	NCATL
EDDIE BUFFALOE	FTA
Lavia Shahid-El	YA10
Stephanie Nantz	YA10
TOM YOUNCE	NC ASSOCIATION of Police Chiefs
Mike Olsen	NC State AFL-CIO
Rudolph S. Ch	Rudolph S. Ch & Assoc.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 8, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1048	Governor's DWI Task Force Recommendations.	Representative Hackney

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 8, 2006

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:07 a.m. with sixteen members present.

HB-1048 (Governor's DWI Task Force Recommendation) Committee Substitute was introduced by Senator Clodfelter. He stated that the discussion would start at Part 6. where it ended at the J-1 Committee meeting on June 6, 2006. He then introduced a new Committee Substitute. Senator Phillip Berger moved for adoption of the new Committee Substitute. All members voted yes. Motion carried. Staff attorney, Hal Pell explained that the bill, based upon the findings of the Governor's Task Force on Driving While Impaired, provides measures relating to DWI arrest, enforcement, education, and training. He explained the changes in the new Committee Substitute, and discussed the DWI Tests in detail. Senator's Tony Rand, David Hoyle, Vernon Malone, Phillip Berger, Richard Stevens had questions. Mr. Pell, and Mr. Al Leslie from NC DHHS answered the questions. There was discussion on alcohol screening tests Senator's Martin Nesbitt, Tony Rand, Charlie Albertson, Keith Presnell and RC Soles had questions. Staff attorney, Susan Sitze and Mr. Leslie answered the questions. Mr. Dick Taylor, Academy of Trial Lawyers, and Ms. Carrie Sutton, Chair, Criminal Defense Section of Trial Lawyers spoke on the bill. Senator Clodfelter said Senator Martin Nesbitt would work with staff on an Amendment to the bill in Part 8.

Senator Clodfelter stated that discussion on the bill would be continued at the next meeting.

Meeting was adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1048

Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1048-CSRK-40 [v.27]

6/8/2006 9:12:25 AM

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-403 reads as rewritten:

"(a) Amounts. – With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination within North Carolina indicated on the permit at one time the following amount of alcoholic beverages:

(1) A maximum of 100 liters of unfortified wine;

(2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two ~~combined; or~~ combined;

(3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage ~~permittee.~~permittee; or

(4) A keg of malt beverage for off-premises consumption, when purchased by a person who is not a permittee. For the purposes of this subsection a keg is defined as a portable container designed to hold and dispense five or more gallons of a malt beverage.

(b) Issuance of Permit. – A purchase-transportation permit may be issued by:

(1) The local board chairman;

(2) A member of the local board;

(3) The general manager or supervisor of the local ~~board; or~~board;

(4) The manager or assistant manager of an ABC store, if he is authorized to issue permits by the local board ~~chairman.~~chairman; or

(5) The retailer of a keg of malt beverage for off-premises consumption. A permit issued under this subdivision is only valid for kegs of malt beverage sold by that retailer.

(c) Disqualifications. – A purchase-transportation permit shall not be issued to a person who:

(1) Is not sufficiently identified or known to the issuer;

(2) Is known or shown to be an alcoholic or bootlegger;

(3) Has been convicted within the previous three years of an offense involving the sale, possession, or transportation of nontaxpaid alcoholic beverages; or

(4) Has been convicted within the previous three years of an offense involving the sale of alcoholic beverages without a permit.

(d) Form. – A purchase-transportation permit shall be issued on a printed form adopted by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(e) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the issuing person, one by the purchaser, and one by the store from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request. A permit for the purchase and transportation of spirituous liquor may be issued only by an authorized agent of the local board for the jurisdiction in which the purchase will be made.

(f) Time. – A purchase-transportation permit is valid only until 9:30 P.M. on the date of purchase, which date shall be stated on the permit.

(g) Special Occasion Purchase-Transportation Permit. – When a person holds a special occasion for which a permit under G.S. 18B-1001(8) or (9) is required, the purchase-transportation permit issued to him may provide for the storage at and transportation to and from the site of the special occasion of unfortified wine, fortified wine, and spirituous liquor for a period of no more than 48 hours before and after the special occasion. The purchase-transportation permit authorizes that person to transport only the amounts of those alcoholic beverages authorized by subsection (a). The Commission may adopt rules to govern issuance of these extended purchase-transportation permits.

(h) Any retailer that issues a purchase-transportation permit pursuant to subdivision (b)(5) of this section shall retain the records of all permits issued for at least one year. "

SECTION 2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg of malt beverages for

off-premises consumption, the permit required by G.S. 18B-403(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~kegs for on-premises consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 3. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking Stations and Roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

(2) ~~Designates~~Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. The ~~plan~~ pattern need not be in writing and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test~~ to produce drivers license, registration and insurance information.

(3) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.1. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.2. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.3. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"**§ 20-38.4. Facilities.**

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county or the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the above functions listed in subdivisions (a)(1) and (a)(2) of this section.

"**§ 20-38.5. Motions and district court procedure.**

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.6. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions, and if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 5. Article 7 of Chapter 8C of the General Statutes is amended by adding a new rule of evidence to read:

"**Rule 707. Drug recognition expert and HGN testimony and opinion as to speed of an accident reconstruction expert.**

(a) Results of Horizontal Gaze Nystagmus (HGN) Test. – The results of a horizontal gaze nystagmus (HGN) test are admissible into evidence, and the opinion of the analyst is admissible as to whether the results are consistent with a chemical analysis or consistent with a person who is under the influence of a particular type or class of impairing substances, when the HGN test is administered by a person who has successfully completed training in HGN.

(b) Opinion of Drug Recognition Expert (DRE). – The opinion of a DRE that a person is under the influence of one or more impairing substances, and the opinion as to the category of such impairing substance or substances is admissible in any court or administrative hearing when the DRE holds a current certification as a DRE issued by the Department of Health and Human Services.

(c) Opinion as to Speed of a Vehicle. – Any person who is found by a court to be an expert in accident reconstruction who has performed a reconstruction of a crash or has reviewed the report of investigation may give an opinion as to the speed of a vehicle even if the expert did not actually observe the vehicle moving.

Nothing contained in this Rule shall be construed to prohibit cross-examination of any person as to their opinions and the basis for the opinions and shall not limit other opinion testimony otherwise admissible under the rules of evidence or court decision."

PART V. ALCOHOL SCREENING DEVICES

SECTION 6. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or
b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, and is admissible in a court, or an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~ results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 7. 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:

. . .

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

. . . ."

SECTION 8. G.S. 20-138.1(a) reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration.

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle.

SECTION 9. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration.

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed

gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

. . . ."

SECTION 10. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section ~~is a Class 2 misdemeanor.~~ shall be punished pursuant to G.S. 20-179. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the

offense involving impaired driving, and any minimum punishment applicable shall be imposed.

(c1) Notwithstanding any other provision of law, if a person either pleads or is found guilty of a violation of this section, a court may, with the defendant's consent (i) withhold entry of judgment and defer further proceedings, and (ii) place the defendant on probation for a minimum of one year upon such reasonable terms and conditions as it may require. Action may only be taken under this subsection if all of the following conditions are met:

(1) The defendant has no pending charges under Chapters 18B, 20, 14, or 90 of the General Statutes.

(2) The defendant has no prior convictions for a violation of this section or of Chapter 18B of the General Statues.

(3) The defendant has no prior convictions for an offense involving impaired driving under any federal or other States' statutes relating to the substances or paraphenelia listed in Articles 5, 5A, or 5B of Chapter 90 of the General Statues.

(c2) Notwithstanding any other provision of law, a court shall impose, at a minimum, all of the terms and conditions listed in this subsection for any defendant placed on probation pursuant to subsection (c1) of this section. The defendant shall:

(1) Obtain a substance abuse assessment within 30 days and comply with education or treatment requirements recommended by the assessment.

(2) Not operate a motor vehicle for at least 90 days.

(3) Perform 50 hours of community service and pay the community service fee.

(4) Submit at reasonable times to warrantless searches by a probation officer of his or her person, vehicle, and premises including drug and alcohol screening and testing and pay the costs of such screening and tests.

(5) Not possess or consume any alcoholic beverage or controlled substance unless the controlled substance is lawfully prescribed to the person.

(6) Pay court costs and all fees.

(7) Not violate any law of this or any other state or the federal government.

(8) Remain gainfully employed or in school as a full-time student as determined by the probation officer.

(9) Not violate any other reasonable condition of probation.

Upon violation of any term or condition of probation ordered pursuant to subsection (c1), or of this subsection, the court may enter an adjudication of guilt and proceed as otherwise provided.

(c3) Upon fulfillment of the terms and conditions of probation ordered under subsections (c1) or (c2) of this section, the court shall discharge the defendant and dismiss the proceedings against him if all of the following conditions are met:

(1) The defendant does not have any pending charges for violating any law of this State.
(2) The defendant has not violated any laws of this State, including infractions.
(3) The defendant has not been convicted of violating any federal or other States' statutes that are substantially similar to provisions in Chapters 18B, 20, 14, or 90 of the General Statutes.

Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions.

(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20 179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.
(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20 179.3, other than the requirement in G.S. 20 179.3(b)(1)c. G.S. 20 179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20 179.3 shall apply. G.S. 20 179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

SECTION 11. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 12. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 13. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if ~~he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,
(2) the person was engaged in the offense of impaired driving under

G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a1)(2) is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if ~~he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) the commission of the offense in subdivision (a2)(2) is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a3)(2) is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a4)(2) is the proximate cause of the serious injury, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a5)(2) is the proximate cause of the death, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5), and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW

SECTION 14. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12 month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more, ~~0.04~~0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

(5) ~~The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures,~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person is notified of his or her~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement ~~officer,~~ officer or chemical analyst, ~~in the presence of the chemical analyst who has~~

~~notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and either may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer~~ analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~ officer ~~must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging~~ officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~ officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~ shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the

person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer~~.analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to

file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20 138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20 179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20 179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A 133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as

defined in G.S. 7A 41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20 17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20 139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 15. G.S. 20-139.1 reads as rewritten:

"§ 20-139.1. **Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if~~ Preventive ~~Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a

person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the type of analyses that they can perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the ~~charging~~ law enforcement officer's request for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question

and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall allow the person access to a telephone to attempt to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis

if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d)(1) by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably

done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 16. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 17. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 18. G.S. 20-138.4 reads as rewritten:

"§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum,

(1) The alcohol concentration or the fact that the driver refused.

(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.

(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records,

(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.

(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.

(6) The name and agency of the charging officer and whether the officer is available.

(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 19.1. G.S. 7A-109.2 reads as rewritten:

"§ 7A-109.2. Records of dispositions in criminal ~~cases.~~cases; impaired driving integrated data system.

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;

(2) The reasons for any pretrial dismissal by the court;

(3) The reasons for any continuances granted in the case;

(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;

(5) The reasons for any suppression of evidence;

(6) The reasons for dismissal of charges at trial;

(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;

(8) The amount and reason for waiving or reduction of any fee or fine;

(9) The time or other conditions given to pay any fine, cost, or fees;

(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;

(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and

(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees.

SECTION 19.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-346.3. Impaired driving integrated data system report.**

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State, by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction, amount collected and amount still owed,, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR.

SECTION 20. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notices. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 21. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license

under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~ year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) the person violates any condition of the restoration;

(2) the person is convicted of any moving offense in this or another state;

(3) the person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the

other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 22. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis

is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of the subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating Factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the Jury. -- If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury Selection. -- A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court

(1) Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge

only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant Pleads Guilty to the Charge Only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of

sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned

under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he ~~must~~ shall note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are

applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or
~~(3) Not operate a motor vehicle for a term of 60 days; or~~
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
~~(3) Not operate a motor vehicle for a term of 30 days; or~~
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or
(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of

impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment or ~~community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (s)(2), the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail, if

(i) the defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

(ii) the defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts."

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 23. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 24. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 25. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

. . .

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year old. A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8) or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 26. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 27. G.S. 18B-1003(c) reads as rewritten:

(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;

(3) Convicted of an alcoholic beverage offense within two years; or

(4) Convicted of a misdemeanor controlled substances offense within two years.

(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 28. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judges shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 29. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;
2. Before the judge who presided at trial;
3. Before the end of the session if made in superior court; and
4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in District Court without the signature of the District Attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate belief without the District Attorney's signature 10 business days after the District Attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

PART XIX. EFFECTIVE DATE

SECTION 30. Section 19.1, which requires that the Administrative Office of the Courts electronically record certain data contained in subsection (c) of

G.S. 20-138.4, as amended by Section 18 of this act, becomes effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

HOUSE BILL 1048 PCS:
DWI Task Force Recommendations

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 7, 2006
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	PCS to Third Edition H1048-CSRK-40		Committee Co-Counsel

SUMMARY: ***This bill, based upon the findings of the Governor's Task Force on Driving While Impaired, provides measures relating to DWI arrest, enforcement, education, and training. The measures have varying effective dates.*** *[ATTACHMENT -- Bill and PCS Comparison]*

BILL ANALYSIS:

PART I – REGULATING MALT BEVERAGE KEGS

Section 1: Amends the law to require a purchase-transportation permit for the purchase and off-premises transportation of a keg of malt beverage. Retailers of keg malt beverages would be authorized to issue purchase-transportation permits, and would be required to maintain sales records for one year.

Section 2: Conforming changes.

PART II – MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

Section 3: Amends the statute regulating impaired driving checkpoints. The provision

- Creates a single "checking station" or "roadblock" instead of "impaired driving" checkpoints and "driver's license" checkpoints. Impaired driving checkpoints are statutorily regulated; however, the requirements for driver's license checkpoints are derived from case law.
- Requires the law enforcement agency (LEA) to designate in advance the pattern for stopping vehicles and for the production of a driver's license, a registration card, or insurance information. An individual officer would not have the discretion to determine which drivers would be required to produce a driver's license, registration, or insurance information.
- Requires that at least one LEA vehicle have its blue lights in operation.
- If an officer determines that the driver has previously consumed alcohol, or has an open container, the officer may conduct an alcohol screening test.
- Provides that checkpoints should be random and not repeatedly located in the same location.

Part III – PROVIDING FOR IMPLIED CONSENT PRETRIAL AND COURT PROCEEDINGS

Section 4: This Part would create a new Article in Chapter 20 to provide pretrial procedures for implied consent offenses. An "implied consent offense" is defined by statute as an offense involving impaired driving or an alcohol-related offense subject to the procedures in N.C.G.S § 20-16.2, Implied Consent to Chemical Analysis.

§ 20-38 provides that the procedures are mandatory for the investigation and processing of an implied-consent offense. The trial procedures apply to any implied-consent offense litigated in District Court.

§ 20-38.1 provides for extraterritorial jurisdiction for officers who are seeking evidence of a driver's impairment in the course of investigating an implied consent offense or vehicle crash.

§ 20-38.2 Upon an arrest, a law enforcement officer

- must inform the person why they're being arrested;
- may take the person for a chemical analysis, inside or outside of their personal jurisdiction, at the request of any law enforcement officer, and for any evaluation to determine the extent or cause of impairment;
- may take the person to some other location to be identified, to complete a crash report, or for some other lawful purpose;
- may take photographs and fingerprints in accordance with law; and
- must take the person before a judicial official for an initial appearance after the completion of all other procedures.

§ 20-38.3 governs the initial appearance before a magistrate. The provisions modify the current procedures in effect for an appearance before a magistrate. The modifications include

- A requirement that, to the extent practicable, the magistrate is to be available at locations other than the courthouse for an initial appearance.
- If probable cause is found, a requirement that the magistrate consider whether the provisions of § 15A-534.2 should be invoked.

§ 20-38.4 requires the Chief District Court Judge, the Department of Health and Human Services (DHHS), the District Attorney and the Sheriff to

- Establish written procedures for attorneys and witnesses to have access to the chemical analysis room.
- Approve the location of written notice of implied consent rights in the chemical analysis room.
- Approve a procedure to allow a person who is denied pretrial release to have access to outside chemical analysis.

Initially, the Department of Transportation would be required to post signs that explain to the public how to access the chemical analysis room. The county would then be required to maintain any signs for county buildings and the courthouse. If the analysis instrument is in a State or municipal building, then the head of the highway patrol for the county, or the police chief, will be responsible for signs and access instead of the Sheriff.

§ 20-38.5 provides for motions and trial procedures in district court:

- Motions to suppress and dismiss (except for insufficiency) must be made prior to trial.
- Pretrial motions must be in writing and delivered to State at least seven days before any hearing.

- The judge may summarily grant or deny a motion to suppress, or hold a hearing. Findings of fact and conclusions of law must be in writing.

§ 20-38.6 provides for appeals from district court:

- The State may appeal a pretrial suppression of evidence or dismissal of charges to superior court for a *de novo* hearing.
- The defendant may appeal denial of a pretrial motion upon conviction.

Any conviction that is appealed to superior court may not be remanded back to district court unless the prosecutor and superior court consent. The defendant's decision to seek a trial de novo results in a vacation of the sentence. Upon withdrawal of the appeal or remand by the Superior court to the district court, the district court shall hold a new sentencing hearing and take into account any new convictions. The district court shall delay sentencing until any pending charges are resolved.

Part IV -- ALLOWING OPINION TESTIMONY BY DRUG RECOGNITION AND ACCIDENT RECONSTRUCTION EXPERTS, AND ADMISSION OF HGN TESTS.

Section 5. This Part amends the State Evidence Code by adding a new Rule that:

- Allows the admission of the results of a Horizontal Gaze Nystagmus (HGN) Test into evidence. Opinion testimony by a person who has completed HGN training would be admissible on whether the results are consistent with a chemical analysis, or consistent with a person who is under the influence of a particular type or class of impairing substances.
- Allows a Drug Recognition Expert (DRE) to give opinion testimony that
    - A person is was under the influence of one or more impairing substances
    - The impairing substance belongs to a category of impairing substances

  The opinions are admissible if the DRE holds a current certification as a DRE, issued by the Department of Health and Human Services (DHHS).
- Allows an accident reconstruction expert to give an opinion as to the speed of a vehicle--even if the expert did not see the vehicle moving--if the expert has
    - performed a reconstruction of a crash, or
    - has reviewed the report of investigation

The new Rule provides that it shall not be construed to prohibit cross-examination of any person expressing an opinion, and the basis for their opinion. Opinion testimony that is otherwise admissible is not prohibited by the new Rule.

The GTF Report notes that the DRE program began in California, due to drivers who had less than .08 BAC, but were impaired by something other than alcohol. The training is highly technical, and involves recognition of signs of impairment, including behavior, eye movement, and performance on standard field sobriety tests. The Report also notes that HGN is "among the most effective sobriety tests that are administered by officers."

In North Carolina, whether a scientific method is accepted as the basis for admission of evidence depends upon the reliability of the scientific method and not its popularity within a scientific community. "[W]hen no specific precedent exists, scientifically accepted reliability justifies admission

of the testimony ... and such reliability may be found either by judicial notice or from the testimony of scientists who are expert in the subject matter, or a combination of the two." *State v. Bullard*, 312 N.C. at 148.

The GTF Report states that "most states allow crash reconstructionists to give an opinion of speed at time of impact" and that the "physics of a crash and the mathematical formulas are generally accepted in the scientific community."

Part V — ALCOHOL SCREENING DEVICES

Section 6:

Makes technical changes and changes the current law to allow screening tests as evidence in court and administrative proceedings.

Part VI – CLARIFICATION OF IMPAIRED DRIVING OFFENSES

Section 7:

Makes technical corrections and clarifies that "public vehicular areas" include business property, whether the business is open or closed. Also defines "keg" for purposes of the Chapter.

Sections 8 and 9:

- Clarifies the *per se* impaired driving offense for non-commercial and commercial drivers. The Task Force found that some judges do not accept the Intoxilyzer reading as sufficient evidence of impairment, and have required additional evidence of impairment. The statute is amended to clarify existing law that the results of a chemical analysis are sufficient to prove a person's alcohol concentration, and that a person may have a person of their own choosing conduct a chemical analysis of a blood sample. By statute, the results of a defendant's alcohol concentration determined by a chemical analysis are reported to the hundredths.
- Adds the consumption of any amount of Schedule I or II controlled substances as the basis for a DWI violation for both commercial and non-commercial drivers. Also provides a defense to the charge if the controlled substance is lawfully prescribed and taken in therapeutically appropriate amounts.
- Provides the methods of proving the Gross Vehicle Weight for the commercial vehicles.

Section 10:

Creates a deferred prosecution option for persons charged with driving under the age of 21 after having consumed any amount of alcohol. This allows the person to obtain a dismissal after completing an assessment and treatment or education, a period of non-operation, and doing community service, as well as meeting some additional conditions.

Section 11:

Amends the Habitual DWI statute to apply to any person who has 3 previous DWI convictions within a 10 year period. Currently, the law applies to anyone who has 3 previous DWIs within a 7 year period.

Section 12:

Clarifies that required procedures and evidentiary provisions applicable to chemical analyses apply to the immediate license revocation statute.

PART VII – FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

Section 13:

Creates three new offenses: Felony Serious Injury by Vehicle, Aggravated Felony Death by Vehicle, and Aggravated Felony Serious Injury by Vehicle.

- Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired is guilty of a Class F felony.
- Aggravated Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class E felony.
- Aggravated Felony Death -- A person who unintentionally causes the death of another while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class D felony.

Under current law, unintentionally causing a death (not impaired) while violating a statute or ordinance is a Class 1 misdemeanor. The bill would increase the penalty for unintentionally causing death while impaired from a Class G felony to a Class E felony.

The bill also creates the offense of "Repeat Felony Death by Vehicle." A person who has a previous conviction for causing a death while impaired, and is convicted a second time for a felony death by vehicle, is subject to punishment under the second degree murder statute (Class B2 felony).

Part VIII – CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT

Section 14

This part adds clarifying language to G.S. 20-16.2. The part

- Allows any law enforcement officer to perform the chemical analysis (not just the arresting officer).
- Changes the standard of review by the superior court when a license revocation for refusal to submit to chemical analysis is appealed. Currently, the review is a *de novo* review, meaning the superior court hears all the evidence again. This part would change the review to limit it to whether there is (i) sufficient evidence in the record to support the Commissioner's findings of fact, (ii) whether the conclusions of law are supported by the findings of fact and (iii) whether the Commissioner committed an error of law in revoking the license.

Part IX – ADMISSIBILITY OF CHEMICAL ANALYSES

Section 15

This part

- Provides the requirements for the admissibility of a chemical analysis of a person's breath. To be admissible, the analysis must:

- Be performed in accordance with Department of Health and Human Services rules
- Have been performed by a person holding a permit issued by DHHS authorizing the person to perform a test of the breath using the type of instrument employed

- Amends the statute governing admissibility of chemical analyses to allow the court to take notice of the DHHS rules and persons authorized to administer the analyses. DHHS is required to post on a webpage and file in each county a list of all persons who have a permit authorizing them to perform chemical analyses.
- Provides for procedures for establishing the chain of physical custody or control of blood and urine samples. Authorizes the admission of tests on blood or urine if submitted on a form approved by the Attorney General without further authentication. This part restricts the issuance of a subpoena for the chemical analyst unless the subpoena is found to be necessary by the court.
- Provides for a hearing on the admissibility of evidence if the defendant notifies the State at least five (5) days before trial in the superior court division or an adjudicatory hearing in juvenile court.
- Provides that a law enforcement officer may compel, without a court order, a person to provide a blood or urine sample from a person who has refused a test if circumstances require that a test be conducted without a warrant.

Part X – IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

Section 16

- Requires any healthcare provider who is providing medical treatment to a crash victim to provide a law enforcement officer with the crash victim's name, location, and whether the person appears to be impaired.
- Requires the healthcare provider to allow an investigating officer access to visit and interview the person upon request.
- Authorizes an investigator to obtain a certified copy of medical records if they obtain a search warrant or an order specifying the records.
- Provides that certified copies of relevant health information are admissible in any hearing or trial without further authorization.

Section 17

Provides conforming language in the evidence code to reflect the changes set forth in Section 16.

Part XI – PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

Section 18

Amends the current provision which requires a prosecutor to document the reasons behind the reduction or dismissal of impaired driving or driving while license revoked for impaired driving charges.

- Requires the prosecutor to sign a written explanation on an approved form containing the items listed in the statute. The form must be sent to the head of the law enforcement agency employing the charging officer, to the district attorney who employs the prosecutor, and filed in the court file.
- Requires the Administrative Office of the Courts to electronically record the information, and make it available upon request.

Section 19.1

- Requires the clerk of court to keep specific file data on persons charged with impaired driving offenses, including:
    - reasons for dismissal, continuances,
    - suppression of evidence,
    - reduction of charges, or waivers of fines;
    - punishments;
    - compliance with orders; and
    - subsequent court proceedings to enforce sentences or payments of fines, costs, and fees.

Section 19.2

Requires the AOC to maintain the data described in Section 1, and provide an annual report (by calendar year) to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The report is to include the amount of fines, costs, and fees ordered at disposition, and defendants' compliance with sanctions. The AOC is charged with insuring public access to the information by posting it on the agency's internet page, and making the report available to the public at no cost.

Part XII – NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED

Section 20

This section provides that the Division of Motor Vehicles may prove notice of personal delivery, or by mail, by making a notation in its records. A certified copy of the Division's records would be admissible in any court or administrative agency proceeding as proof of notice.

Section 21

Under this amendment, a person is also guilty of a Class 1 misdemeanor if

- The Division has sent a notice of revocation of license for driving while impaired, and the person drives on a highway with a revoked license.
- The person fails to appear for two years from the charge date if charged with an implied consent offense.

Upon conviction, the person license is revoked an additional year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The bill provides that if the license was revoked for a reason stated above, the person may only apply after one year. If a person's license

was revoked due to one of the specified offenses, a conditional restoration requires the person to obtain a substance abuse assessment (and complete any required education or treatment), and show proof of financial responsibility.

The Division may also require the installation of ignition interlock on vehicles, and may cancel conditionally restored licenses if any conditions of restoration are violated. The Division may also cancel vehicle registrations and require the surrender of cards and plates.

PART XIII – MODIFYING CURRENT PUNISHMENTS

Section 22

In *Blakely v. Washington,* decided by the United States Supreme Court in June 2004, the Court held that the facts supporting the imposition of a sentence longer than the statutory maximum must be found by a jury beyond a reasonable doubt, or be admitted by the defendant. In *State v. Allen*, the North Carolina Court of Appeals, in applying Blakely under North Carolina's Structured Sentencing Act, held that the existence of aggravating factors that will increase a felony sentence beyond that which is permitted under the presumptive range must be found by a jury beyond a reasonable doubt, or be admitted by the defendant.

Chapter 20 also includes sentencing provisions that rely on the proof of aggravating factors. Consequently, based upon the holding in *Blakely*, the amendments in these sections provide the procedures for holding a sentencing hearing in Superior Court. A jury would find the aggravating factors necessary for enhanced punishment. The judge is not required to allow proof of aggravating factors to the jury if the defendant stipulates to their existence.

The procedures allow for a defendant to admit to the aggravating factor only, or plead guilty only to the charge. A judge may find the existence of prior convictions without a jury determination. The State must provide notice of its intent to use one or more aggravating factors if the defendant appeals to Superior court.

The bill provides that a defendant sentenced to a term of imprisonment that is 48 hours or more must serve the term hour for hour. Consequently, a defendant arriving at a confinement facility on a Friday evening would not be eligible for release on Sunday morning, although two "days" have passed.

A defendant reporting to jail that shows positive on an alcohol screening test would forfeit any option to serve confinement time on weekends.

Section 23

Requires the clerk of court to keep for a minimum of ten years all records relating to persons charged with impaired driving offenses. Prior to destroying the record, the clerk is required to record the data specified in the provision.

Section 24

Repeals revocation and notice procedures that are superseded by other provisions in the bill.

PART XIV – ILLEGAL CONSUMPTION UNDER 21 AND ADMISSIBILITY OF THE RESULTS OF AN ALCOHOL SCREENING DEVICE

Section 25

The section makes it illegal for a person less than 21 years of age to consume any alcoholic beverages. The exceptions are:

- during the course of treatment by a licensed physician, druggists, or dental surgeons for medicinal or pharmaceutical purposes, or by medical facilities established and maintained for the treatment of addicts;
- for sacramental purposes by any organized church or ordained minister; and
- under the direct supervision of an instructor during a culinary class that is part of a curriculum at an accredited college or university.

The bill authorizes a law enforcement officer to administer a screening test to a person less than 21 years of age if there is probable cause that the person has consumed alcohol. The test result would be admissible in any court or administrative proceeding.

PART XV – DWI DEFENDANTS ASSIGNMENT TO COMMUNITY SERVICE PAROLE OR HOUSE ARREST

Section 26

This section requires that any impaired driving offender that has completed recommended treatment or a training program, and is not being paroled to a residential treatment program, shall as a condition of parole, be placed on

- community service parole, or
- house arrest with electronic monitoring.

PART XVI – PREVENT NONCOMPLIANT PERMIT HOLDERS FROM SWITCHING PERMITS

Section 27

The bill provides that a permittee may not employ someone who has been a permit holder and who has had their permit revoked within three years. This is designed to prevent a current permit holder who becomes ineligible from using a surrogate to be the designated permit holder, while remaining in charge of the business.

PART XVII – DWI TRAINING FOR JUDGES

Section 28

Requires all justices and judges in the General Court of Justice to receive a minimum of two hours of continuing judicial education, every two years, on DWI issues.

PART XVIII – REQUIRE DA SIGNATURE FOR A DISTRICT COURT MOTION FOR APPROPRIATE RELIEF

Section 29

The section provides that a motion for appropriate relief (MAR) may not be granted without the signature of the District Attorney. An MAR is a pleading by the defendant seeking relief from a judgment of the court. If the defendant gives notice by oral motion in court, or written notice to the District Attorney, then the court may grant the motion if the DA has not signed 10 days after receipt of notice.

PART XIX – EFFECTIVE DATE

Section 30

The requirement that the AOC electronically record certain data (see Section 18, above) becomes effective after the next rewrite of the Superior Court Clerks System. Section 22 is effective when it becomes law. The remainder of the act becomes effective on December 1, 2006, and applies to offenses committed on or after that date.

H1048-smrk-csrk-001

Summary contribution by Susan Sitze, Staff Attorney.

ATTACHMENT TO
SUMMARY, H1048-CSRK-40
Senate Judiciary I
June 1, 2006

COMPARISON -- HOUSE BILL 1048 AND SENATE BILL 1048 PCS

Subject Area	House Bill 1048	Senate PCS
Regulating Kegs	Sections 1 & 2	Sections 1 & 2
Checking Stations	Sec. 3 – no written plan if a written policy	Sec. 3 – (1) no req.'ment for a written plan or policy; (2) deletes "near a business selling alcohol" on repeated checkpoints and provides that repeated checkpoints in the same location or proximity should be avoided.
Implied Consent Procedures	Section 4	Section 4 – (1) removes out-of-State application in 20-38.1 and gives State-wide jurisdiction (2) Adds that Dist. Ct. sentence is vacated on appeal to Sup. Ct.
Allow Testimony/Opinion	Section 5	Section 5 (1) removes "in accordance with training" after test name.
Alcohol Screening Devices	Section 6	Section 6

Clarification of Impaired Driving Offenses	Sections 7 – 14 (1) removes "by the public" for regulated areas (2) creates a "third" method of proving DWI (3) removes exemption for horses, bicycles, or lawnmowers (4) changes .04 level for DWI for commercial vehicles to 0.00	Sections 7 – 12 (1) retains "by the public" for regulated areas (2) no third method—clarifies per se .08 burden (3) keeps exemption for horses and bicycles (4) keeps .04 level for commercial vehicles
Felony Death by Vehicle; Felony Serious Injury by Vehicle	Section 15 – (1) makes felony death by vehicle a Class D felony (2) makes felony serious injury by vehicle a Class E felony	Section 13 – (1) makes felony death by vehicle a Class E felony (2) makes felony serious injury by vehicle a Class F felony (3) adds aggravated offenses (4) adds repeat felony death offense
Clarify Implied Consent Law	Section 16	Section 14
Admissibility of Chemical Analysis	Section 17	Section 15 (1) adds language to provision allowing officer to compel blood/urine sample
Improved Access to Medical Records	Section 18	Sections 16 and 17 (1) adds provision exempting information from any applicable privilege
Prosecutor Reporting	Section 19	Section 18

Impaired Driving Data Systems Data System Report		Section 19.1 Section 19.2

Notice Procedure and Driving While License Revoked	Sections 20 and 21	Sections 20 and 21 (1) re-drafts req.'ments for cond. license where revoked under specified sections (2) Identifies vehicles subject to cancellation of registration and plate surrender
Modify Punishments	Sections 22 -- 24	Sections 22 -- 24
Illegal consumption under 21 years	Section 25 and 26	Section 25 (1) adds technical addition for 19 and 20 year olds
Parole of DWI defendants	Section 27	Section 26
Prevent Switching Names of Permit Holders		Section 27
DWI Training for Judges		Section 28
Require DA signature on MAR filing		Section 29
Effective Date	Section 28	Section 30

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6-8-06
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
	Sct.
James Andrews	NC State AFL-CIO
	NCAJ
	NCNU
	NCSBA
	Senate staff
	Smith Anderson
	McGuire Woods
	Shaw University

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-8-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Kerstin W Sutton	NCATL / Atty
[illegible]	NCATL
Jon Kent	Forsyth Co Pub Defs Atty
IKE Avery	Avery RAPS PC PO Box 10174 Raleigh 27605
FRAN PRESTON	NCRMA
ANDY ELLEN	NCRMA
ELIZABETH DALTON	NCRMA
Paul Pulley	NCATL
Jim Drennan	Institute of Gov't
Matt Osborne	AOC
Peg Dorer	NC Conference of D.A.s
[illegible]	PANC - retired

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-8-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Charlie Reece	NC Conf. of DA's
Chris D. Valauri	NC Beer & Wine
Susanne Stutts	NCRA
Rebekah Gonçalves	ACLU-NC
Cathy Matthews	DMV
[illegible] Eisele	DHHS
Bryce Ball	Fiscal Research
Debbie Dawes	Innovation Research + Training, Inc.
Troy Page	N.C. Sentencing Commission
Jennifer Epperson	Gov's office
Kathryn Pomeroy	Gov's office

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 13, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1048	Governor's DWI Task Force Recommendations.	Representative Hackney

Senator Daniel G. Clodfelter, Chair

Judiciary I Committee

June 13, 2006 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:02 a.m. with sixteen members present. Pages, Amanda Eason from Benson, NC, Brittany Brinson, and Kristen Brinson from Durham, NC, Taylor Broone, from Sutherlin, VA, and Natalie Baker, from Tarboro NC, were introduced by Senator Clodfelter.

HB-1048 (Governor's DWI Task Force Recommendations) New Committee Substitute was introduced by Senator Clodfelter. Senator Andrew Brock moved for adoption of the new Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter stated that the Committee would continue to study the bill and make any necessary Amendments. Mr. Hal Pell, staff attorney, began explaining the bill at Section 10, where he ended at the previous meeting. Senator David Hoyle had a question. Mr., Pell and Al Leslie from NC DHHS answered the question. Mr., Pell explained all Parts and Sections up to Section 21. Senator Clodfelter stated that there will be possible Amendments made to the Sections as they are discussed. Senator's Peter Brunstetter, Tony Rand, Charlie Albertson, Phillip Berger, Harry Brown, Martin Nesbitt, Richard Stevens, Vernon Malone, and Charlie Albertson, had questions about the bill. Representative Joe Hackney, Ms. Kathy Matthews, from NC DMV, and Mr. Pell answered the questions. Mr. Ike Avery, Private legal consultant spoke on the bill and answered questions. Senator Clodfelter asked the members to read the bill further, and get any Amendments ready for the afternoon meeting at 1:00 p.m.

The meeting adjourned at 10:57 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

6/13 Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1048

Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1048-CSRK-40 [v.29]

6/9/2006 2:21:38 PM

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-403 reads as rewritten:

"(a) Amounts. – With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination within North Carolina indicated on the permit at one time the following amount of alcoholic beverages:

(1) A maximum of 100 liters of unfortified wine;

(2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two ~~combined; or~~ combined;

(3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage ~~permittee.~~permittee; or

(4) Kegs of malt beverage for off-premises consumption, when purchased by a person who is not a permittee. For the purposes of this subsection a keg is defined as a portable container designed to hold and dispense five or more gallons of a malt beverage.

(b) Issuance of Permit. – A purchase-transportation permit may be issued by:

(1) The local board chairman;

(2) A member of the local board;

(3) The general manager or supervisor of the local ~~board; or~~board;

(4) The manager or assistant manager of an ABC store, if he is authorized to issue permits by the local board ~~chairman.~~chairman; or

(5) The retailer of kegs of malt beverage for off-premises consumption. A permit issued under this subdivision is only valid for kegs of malt beverage sold by that retailer.

(c) Disqualifications. – A purchase-transportation permit shall not be issued to a person who:

(1) Is not sufficiently identified or known to the issuer;

(2) Is known or shown to be an alcoholic or bootlegger;

(3) Has been convicted within the previous three years of an offense involving the sale, possession, or transportation of nontaxpaid alcoholic beverages; or

(4) Has been convicted within the previous three years of an offense involving the sale of alcoholic beverages without a permit.

(d) Form. – A purchase-transportation permit shall be issued on a printed form adopted by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(e) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the issuing person, one by the purchaser, and one by the store from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request. A permit for the purchase and transportation of spirituous liquor may be issued only by an authorized agent of the local board for the jurisdiction in which the purchase will be made.

(f) Time. – A purchase-transportation permit is valid only until 9:30 P.M. on the date of purchase, which date shall be stated on the permit.

(g) Special Occasion Purchase-Transportation Permit. – When a person holds a special occasion for which a permit under G.S. 18B-1001(8) or (9) is required, the purchase-transportation permit issued to him may provide for the storage at and transportation to and from the site of the special occasion of unfortified wine, fortified wine, and spirituous liquor for a period of no more than 48 hours before and after the special occasion. The purchase-transportation permit authorizes that person to transport only the amounts of those alcoholic beverages authorized by subsection (a). The Commission may adopt rules to govern issuance of these extended purchase-transportation permits.

(h) Any retailer that issues a purchase-transportation permit pursuant to subdivision (b)(5) of this section shall retain the records of all permits issued for at least one year. "

SECTION 2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg of malt beverages for

off-premises consumption, the permit required by G.S. 18B-403(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~kegs for on-premises consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 3. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking Stations and Roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

(2) ~~Designates~~Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. The ~~plan~~ pattern need not be in writing and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test~~ to produce drivers license, registration and insurance information.

(3) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.1. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.2. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.3. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"**§ 20-38.4. Facilities.**

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county or the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the above functions listed in subdivisions (a)(1) and (a)(2) of this section.

"**§ 20-38.5. Motions and district court procedure.**

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.6. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions, and if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 5. Article 7 of Chapter 8C of the General Statutes is amended by adding a new rule of evidence to read:

"**Rule 707. Drug recognition expert and HGN testimony and opinion as to speed of an accident reconstruction expert.**

(a) Results of Horizontal Gaze Nystagmus (HGN) Test. – The results of a horizontal gaze nystagmus (HGN) test are admissible into evidence, and the opinion of the analyst is admissible as to whether the results are consistent with a chemical analysis or consistent with a person who is under the influence of a particular type or class of impairing substances, when the HGN test is administered by a person who has successfully completed training in HGN.

(b) Opinion of Drug Recognition Expert (DRE). – The opinion of a DRE that a person is under the influence of one or more impairing substances, and the opinion as to the category of such impairing substance or substances is admissible in any court or administrative hearing when the DRE holds a current certification as a DRE issued by the Department of Health and Human Services.

(c) Opinion as to Speed of a Vehicle. – Any person who is found by a court to be an expert in accident reconstruction who has performed a reconstruction of a crash or has reviewed the report of investigation may give an opinion as to the speed of a vehicle even if the expert did not actually observe the vehicle moving.

Nothing contained in this Rule shall be construed to prohibit cross-examination of any person as to their opinions and the basis for the opinions and shall not limit other opinion testimony otherwise admissible under the rules of evidence or court decision."

PART V. ALCOHOL SCREENING DEVICES

SECTION 6. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or
b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, and is admissible in a court, or an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~ results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 7. 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:

. . .

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

. . .

(45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada.~~ a province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina.

. . ."

SECTION 8. G.S. 20-138.1(a) reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle.

SECTION 9. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

. . . ."

SECTION 10. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human

Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section ~~is a Class 2 misdemeanor.~~ shall be punished pursuant to G.S. 20-179. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

(c1) Notwithstanding any other provision of law, if a person either pleads or is found guilty of a violation of this section, a court may, with the defendant's consent (i) withhold entry of judgment and defer further proceedings, and (ii) place the defendant on probation for a minimum of one year upon such reasonable terms and conditions as it may require. Action may only be taken under this subsection if all of the following conditions are met:

(1) The defendant has no pending charges under Chapters 18B, 20, 14, or 90 of the General Statutes.

(2) The defendant has no prior convictions for a violation of this section or of Chapter 18B of the General Statues.

(3) The defendant has no prior convictions for an offense involving impaired driving under any federal or other States' statutes relating to the substances or paraphenelia listed in Articles 5, 5A, or 5B of Chapter 90 of the General Statues.

(c2) Notwithstanding any other provision of law, a court shall impose, at a minimum, all of the terms and conditions listed in this subsection for any defendant placed on probation pursuant to subsection (c1) of this section. The defendant shall:

(1) Obtain a substance abuse assessment within 30 days and comply with education or treatment requirements recommended by the assessment.

(2) Not operate a motor vehicle for at least 90 days.

(3) Perform 50 hours of community service and pay the community service fee.

(4) Submit at reasonable times to warrantless searches by a probation officer of his or her person, vehicle, and premises including drug and alcohol screening and testing and pay the costs of such screening and tests.

(5) Not possess or consume any alcoholic beverage or controlled substance unless the controlled substance is lawfully prescribed to the person.

(6) Pay court costs and all fees.

(7) Not violate any law of this or any other state or the federal government.

(8) Remain gainfully employed or in school as a full-time student as determined by the probation officer.

(9) Not violate any other reasonable condition of probation.

Upon violation of any term or condition of probation ordered pursuant to subsection (c1), or of this subsection, the court may enter an adjudication of guilt and proceed as otherwise provided.

(c3) Upon fulfillment of the terms and conditions of probation ordered under subsections (c1) or (c2) of this section, the court shall discharge the defendant and dismiss the proceedings against him if all of the following conditions are met:

(1) The defendant does not have any pending charges for violating any law of this State.

(2) The defendant has not violated any laws of this State, including infractions.

(3) The defendant has not been convicted of violating any federal or other States' statutes that are substantially similar to provisions in Chapters 18B, 20, 14, or 90 of the General Statutes.

Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions.

(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20 179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20 179.3, other than the requirement in G.S. 20 179.3(b)(1)c. G.S. 20 179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20 179.3 shall apply. G.S. 20 179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

SECTION 11. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 12. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 13. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if ~~he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a1)(2) is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if ~~he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) the commission of the offense in subdivision (a2)(2) is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a3)(2) is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a4)(2) is the proximate cause of the serious injury, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a5)(2) is the proximate cause of the death, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5), and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class I misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW

SECTION 14. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one

year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more, ~~0.04~~ 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

~~(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures;~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person is notified of his or her~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a

blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement ~~officer,~~ officer or chemical analyst, ~~in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and either may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~ officer ~~must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging~~ officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~ officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~ shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the

person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been

eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20 138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20 179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20 179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A 133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A 41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20 17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20 139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to

submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 15. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical~~

~~analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if Preventive Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the type of analyses that they can perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the ~~charging~~ law enforcement officer's request for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or

urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of

custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall allow the person access to a telephone to attempt to arrange for any additional test and allow access to the person in accordance with the agreed

procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d)(1) by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.
(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.
(3) The type of chemical analysis administered and the procedures followed.
(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.
(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon

the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 16. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 17. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 18. G.S. 20-138.4 reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.**

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum,

(1) The alcohol concentration or the fact that the driver refused.

(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.

(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records,

(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.

(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.

(6) The name and agency of the charging officer and whether the officer is available.

(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 19.1. G.S. 7A-109.2 reads as rewritten:

"§ 7A-109.2. Records of dispositions in criminal ~~cases.~~cases; impaired driving integrated data system.

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;
(2) The reasons for any pretrial dismissal by the court;
(3) The reasons for any continuances granted in the case;
(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;
(5) The reasons for any suppression of evidence;
(6) The reasons for dismissal of charges at trial;
(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;
(8) The amount and reason for waiving or reduction of any fee or fine;
(9) The time or other conditions given to pay any fine, cost, or fees;
(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;
(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and
(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees.

SECTION 19.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-346.3. Impaired driving integrated data system report.

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State, by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction,

amount collected and amount still owed,, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR.

SECTION 20. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notices. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 21. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional

period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. -- A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~-year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) the person violates any condition of the restoration;

(2) the person is convicted of any moving offense in this or another state;

(3) the person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 22. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the

defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of the subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating Factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the Jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury Selection. -- A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court

(1) Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant Pleads Guilty to the Charge Only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the

appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he ~~must~~ shall note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required

by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

~~(3) Not operate a motor vehicle for a term of 60 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

~~(3) Not operate a motor vehicle for a term of 30 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment or ~~community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (s)(2), the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail, if

(i) the defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

(ii) the defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts."

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 23. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 24. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 25. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

. . .

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year old. A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device

administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8) or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 26. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 27. G.S. 18B-1003(c) reads as rewritten:

(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;
(3) Convicted of an alcoholic beverage offense within two years; or
(4) Convicted of a misdemeanor controlled substances offense within two years.
(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 28. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judges shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 29. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.
(1) A motion for appropriate relief must:
a. Be made in writing unless it is made:
1. In open court;
2. Before the judge who presided at trial;
3. Before the end of the session if made in superior court; and
4. Within 10 days after entry of judgment;
b. State the grounds for the motion;
c. Set forth the relief sought; and
d. Be timely filed.
(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in District Court without the signature of the District Attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate belief without the District Attorney's signature 10 business days after the District Attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

PART XIX. EFFECTIVE DATE

SECTION 30. Sections 18, 19.1, and 19.2 become effective upon the effective date of the next rewrite of the superior court clerks system by the Administrative Office of the Courts. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6/13/06 (A.M.)

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Lysia Vogel	Victim's mother & DUI fatality of 582 Broghill Rd. Fayetteville, NC 28314
Megan Glazier	Rep. Glazier
Chad Hinton	Civitas Institute
IKE Avery	Avery PC Raleigh, NC
AL EISELE	DMHS
JOHN K. FANNEY	A Hey NCATL
Matt Osborne	AOC
TROY PAGE	N.C. SENTENCING COMMISSION
Chris Valauri	N.C. Beer & Wine Assn
Andy Ellen	NCRMA
Sue Shotzberger	ACLU-NC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-13-06(AM)

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rebekah Goncaros	ACLU-NC
Jennifer Epperson	Governor's office
Tim Moore	DOC
James Andrews	NC State AFL-CIO
Cathy Matthews	DMV
Allison Berry	NCCASA
Carrie Randa	NCCASA
Beth Turner	Bank of America
Cathy Wiggins	Gov's office
John McMillan	MPA's
Henry Hinton	N.C. B.A.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-13-06 (AM)

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
R. J. Ball	Fiscal Research
Jeff Gray	Fraternal Order of Police
Chris Rocco	Poyner & Spruill
DAVID BARNES	Poyner Spruill
Blair Carr	City of Greensboro
Jim Blackburn	N.C. Association of County Commissioners
Lauren Haigler	Senator Basnight's Office
Cam Cook	BPMHL
JUSTIN WORTMAN	BPMHL
David Sands	WCSR
Kim Leonard	WCSR

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-13-06 (AM)

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Bob Phillips	Common Cause
Erin Strickland	4-H citizenship Focus
R.A. Thompson	NCPBA
Betty Sauls	Duplin Co AgriBusiness
Jimmy Sauls	" " "
[illegible]	" " "

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 13, 2006	1:00 PM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1048	Governor's DWI Task Force Recommendations.	Representative Hackney

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 13, 2006 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 1:04 p.m. with fourteen members present. The same Pages from the 10:00 a. m. meeting were present.

HB-1048 (Governor's DWI Task Force Recommendations) New Committee Substitute was introduced again by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter asked staff attorney, Hal Pell to begin explaining the bill, starting at Section 22. Senator Martin Nesbitt had a question. Staff attorney, Hal Pell answered the question, and said he would have more information for him when he could obtain it. **Senator Tony Rand offered Amendment #1** to the bill. (See attached copy of Amendment), and explained it to the members. Senator's Martin Nesbitt and Richard Stevens had questions. Mr. Andy Ellen, NC Retail Merchants Association answered the questions. Senator Clodfelter called for a vote. All members voted yes. Amendment was adopted. **Senator Nesbitt offered Amendment #2** to the bill. Senator Tony Rand had a question. Senator Clodfelter stated that the **Amendment** would be **displaced** until information could be obtained to determine if a law already existed from a former bill that Senator Austin Allran sponsored in the previous session. **Senator Nesbitt offered Amendment #3** on page 10, line 9, and explained it to the members. Senator's Clodfelter, Tony Rand, Andrew Brock and Charlie Albertson had questions. Mr. Ike Avery, private Legal Consultant, and Mr. Pell answered the questions. Senator Clodfelter stated that the Amendment would be displaced for further work. **Senator Nesbitt offered Amendment #4** on the bill, and explained the Amendment. Senator's Clark Jenkins, Jerry Tillman, Harry Brown, and Keith, Presnell had questions Senator Clodfelter called for a vote. All members voted yes. **Amendment adopted**. Senator Clodfelter stated that the staff attorney's would work on the Amendmemts, and the bill would be voted on at a future meeting.

Being no further business the meeting adjourned at 1:52 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1048

Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1048-CSRK-40 [v.29]

6/9/2006 2:21:38 PM

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-403 reads as rewritten:

"(a) Amounts. – With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination within North Carolina indicated on the permit at one time the following amount of alcoholic beverages:

(1) A maximum of 100 liters of unfortified wine;

(2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two ~~combined; or~~ combined;

(3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage ~~permittee.~~permittee; or

(4) Kegs of malt beverage for off-premises consumption, when purchased by a person who is not a permittee. For the purposes of this subsection a keg is defined as a portable container designed to hold and dispense five or more gallons of a malt beverage.

(b) Issuance of Permit. – A purchase-transportation permit may be issued by:

(1) The local board chairman;

(2) A member of the local board;

(3) The general manager or supervisor of the local ~~board; or~~board;

(4) The manager or assistant manager of an ABC store, if he is authorized to issue permits by the local board ~~chairman~~chairman; or

(5) The retailer of kegs of malt beverage for off-premises consumption. A permit issued under this subdivision is only valid for kegs of malt beverage sold by that retailer.

(c) Disqualifications. – A purchase-transportation permit shall not be issued to a person who:

(1) Is not sufficiently identified or known to the issuer;

(2) Is known or shown to be an alcoholic or bootlegger;

(3) Has been convicted within the previous three years of an offense involving the sale, possession, or transportation of nontaxpaid alcoholic beverages; or

(4) Has been convicted within the previous three years of an offense involving the sale of alcoholic beverages without a permit.

(d) Form. – A purchase-transportation permit shall be issued on a printed form adopted by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(e) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the issuing person, one by the purchaser, and one by the store from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request. A permit for the purchase and transportation of spirituous liquor may be issued only by an authorized agent of the local board for the jurisdiction in which the purchase will be made.

(f) Time. – A purchase-transportation permit is valid only until 9:30 P.M. on the date of purchase, which date shall be stated on the permit.

(g) Special Occasion Purchase-Transportation Permit. – When a person holds a special occasion for which a permit under G.S. 18B-1001(8) or (9) is required, the purchase-transportation permit issued to him may provide for the storage at and transportation to and from the site of the special occasion of unfortified wine, fortified wine, and spirituous liquor for a period of no more than 48 hours before and after the special occasion. The purchase-transportation permit authorizes that person to transport only the amounts of those alcoholic beverages authorized by subsection (a). The Commission may adopt rules to govern issuance of these extended purchase-transportation permits.

(h) Any retailer that issues a purchase-transportation permit pursuant to subdivision (b)(5) of this section shall retain the records of all permits issued for at least one year. "

SECTION 2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg of malt beverages for

off-premises consumption, the permit required by G.S. 18B-403(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~kegs for on-premises consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 3. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking Stations and Roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

(2) ~~Designates~~Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. The ~~plan~~ pattern need not be in writing and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test~~ to produce drivers license, registration and insurance information.

(3) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.1. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.2. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.3. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"**§ 20-38.4. Facilities.**

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county or the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the above functions listed in subdivisions (a)(1) and (a)(2) of this section.

"**§ 20-38.5. Motions and district court procedure.**

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.6. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions, and if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 5. Article 7 of Chapter 8C of the General Statutes is amended by adding a new rule of evidence to read:

"**Rule 707. Drug recognition expert and HGN testimony and opinion as to speed of an accident reconstruction expert.**

(a) Results of Horizontal Gaze Nystagmus (HGN) Test. – The results of a horizontal gaze nystagmus (HGN) test are admissible into evidence, and the opinion of the analyst is admissible as to whether the results are consistent with a chemical analysis or consistent with a person who is under the influence of a particular type or class of impairing substances, when the HGN test is administered by a person who has successfully completed training in HGN.

(b) Opinion of Drug Recognition Expert (DRE). – The opinion of a DRE that a person is under the influence of one or more impairing substances, and the opinion as to the category of such impairing substance or substances is admissible in any court or administrative hearing when the DRE holds a current certification as a DRE issued by the Department of Health and Human Services.

(c) Opinion as to Speed of a Vehicle. – Any person who is found by a court to be an expert in accident reconstruction who has performed a reconstruction of a crash or has reviewed the report of investigation may give an opinion as to the speed of a vehicle even if the expert did not actually observe the vehicle moving.

Nothing contained in this Rule shall be construed to prohibit cross-examination of any person as to their opinions and the basis for the opinions and shall not limit other opinion testimony otherwise admissible under the rules of evidence or court decision."

PART V. ALCOHOL SCREENING DEVICES

SECTION 6. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or
b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, and is admissible in a court, or an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~ results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 7. 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:

. . .

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

. . .

(45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada.~~ a province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina.

. . ."

SECTION 8. G.S. 20-138.1(a) reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle.

SECTION 9. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

. . . ."

SECTION 10. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human

Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section ~~is a Class 2 misdemeanor.~~ shall be punished pursuant to G.S. 20-179. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

(c1) Notwithstanding any other provision of law, if a person either pleads or is found guilty of a violation of this section, a court may, with the defendant's consent (i) withhold entry of judgment and defer further proceedings, and (ii) place the defendant on probation for a minimum of one year upon such reasonable terms and conditions as it may require. Action may only be taken under this subsection if all of the following conditions are met:

(1) The defendant has no pending charges under Chapters 18B, 20, 14, or 90 of the General Statutes.

(2) The defendant has no prior convictions for a violation of this section or of Chapter 18B of the General Statues.

(3) The defendant has no prior convictions for an offense involving impaired driving under any federal or other States' statutes relating to the substances or paraphenelia listed in Articles 5, 5A, or 5B of Chapter 90 of the General Statues.

(c2) Notwithstanding any other provision of law, a court shall impose, at a minimum, all of the terms and conditions listed in this subsection for any defendant placed on probation pursuant to subsection (c1) of this section. The defendant shall:

(1) Obtain a substance abuse assessment within 30 days and comply with education or treatment requirements recommended by the assessment.

(2) Not operate a motor vehicle for at least 90 days.

(3) Perform 50 hours of community service and pay the community service fee.

(4) Submit at reasonable times to warrantless searches by a probation officer of his or her person, vehicle, and premises including drug and alcohol screening and testing and pay the costs of such screening and tests.

(5) Not possess or consume any alcoholic beverage or controlled substance unless the controlled substance is lawfully prescribed to the person.

(6) Pay court costs and all fees.

(7) Not violate any law of this or any other state or the federal government.

(8) Remain gainfully employed or in school as a full-time student as determined by the probation officer.

(9) Not violate any other reasonable condition of probation.

Upon violation of any term or condition of probation ordered pursuant to subsection (c1), or of this subsection, the court may enter an adjudication of guilt and proceed as otherwise provided.

(c3) Upon fulfillment of the terms and conditions of probation ordered under subsections (c1) or (c2) of this section, the court shall discharge the defendant and dismiss the proceedings against him if all of the following conditions are met:

(1) The defendant does not have any pending charges for violating any law of this State.

(2) The defendant has not violated any laws of this State, including infractions.

(3) The defendant has not been convicted of violating any federal or other States' statutes that are substantially similar to provisions in Chapters 18B, 20, 14, or 90 of the General Statutes.

Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions.

(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20 179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20 179.3, other than the requirement in G.S. 20 179.3(b)(1)c. G.S. 20 179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20 179.3 shall apply. G.S. 20 179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

SECTION 11. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 12. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 13. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if ~~he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a1)(2) is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if ~~he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) the commission of the offense in subdivision (a2)(2) is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a3)(2) is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a4)(2) is the proximate cause of the serious injury, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a5)(2) is the proximate cause of the death, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5), and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW

SECTION 14. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one

year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more, ~~0.04~~ 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

~~(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures;~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person is notified of his or her~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a

blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement ~~officer,~~ officer or chemical analyst, ~~in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and either may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~ officer ~~must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging~~ officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~ officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~ shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the

person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been

eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20 138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20 179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20 179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A 133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A 41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20 17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20 139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to

submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 15. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical~~

~~analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if~~ Preventive ~~Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the type of analyses that they can perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. -- Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the ~~charging~~ law enforcement officer's request for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or

urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of

custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall allow the person access to a telephone to attempt to arrange for any additional test and allow access to the person in accordance with the agreed

procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d)(1) by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.
(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.
(3) The type of chemical analysis administered and the procedures followed.
(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.
(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon

the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 16. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 17. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 18. G.S. 20-138.4 reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.**

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum,

(1) The alcohol concentration or the fact that the driver refused.

(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.

(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records,

(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.

(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.

(6) The name and agency of the charging officer and whether the officer is available.

(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 19.1. G.S. 7A-109.2 reads as rewritten:

"§ 7A-109.2. Records of dispositions in criminal ~~cases;~~cases; impaired driving integrated data system.

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;
(2) The reasons for any pretrial dismissal by the court;
(3) The reasons for any continuances granted in the case;
(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;
(5) The reasons for any suppression of evidence;
(6) The reasons for dismissal of charges at trial;
(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;
(8) The amount and reason for waiving or reduction of any fee or fine;
(9) The time or other conditions given to pay any fine, cost, or fees;
(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;
(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and
(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees.

SECTION 19.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-346.3. Impaired driving integrated data system report.

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State, by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction,

amount collected and amount still owed,, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR.

SECTION 20. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notices. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 21. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional

period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. -- A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~ year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) the person violates any condition of the restoration;

(2) the person is convicted of any moving offense in this or another state;

(3) the person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 22. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the

defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of the subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating Factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the Jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury Selection. -- A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court

(1) Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant Pleads Guilty to the Charge Only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the

appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.
(2) Especially reckless or dangerous driving.
(3) Negligent driving that led to a reportable accident.
(4) Driving by the defendant while his driver's license was revoked.
(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.
(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).
(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he ~~must~~ shall note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).
(3) The mitigating factors substantially outweigh any aggravating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required

by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

~~(3) Not operate a motor vehicle for a term of 60 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

~~(3) Not operate a motor vehicle for a term of 30 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment or ~~community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (s)(2), the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail, if

(i) the defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

(ii) the defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts."

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 23. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 24. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 25. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

. . .

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year old. A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device

administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8) or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 26. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 27. G.S. 18B-1003(c) reads as rewritten:

(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;
(3) Convicted of an alcoholic beverage offense within two years; or
(4) Convicted of a misdemeanor controlled substances offense within two years.
(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 28. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judges shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 29. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.
(1) A motion for appropriate relief must:
a. Be made in writing unless it is made:
1. In open court;
2. Before the judge who presided at trial;
3. Before the end of the session if made in superior court; and
4. Within 10 days after entry of judgment;
b. State the grounds for the motion;
c. Set forth the relief sought; and
d. Be timely filed.
(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in District Court without the signature of the District Attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate belief without the District Attorney's signature 10 business days after the District Attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

PART XIX. EFFECTIVE DATE

SECTION 30. Sections 18, 19.1, and 19.2 become effective upon the effective date of the next rewrite of the superior court clerks system by the Administrative Office of the Courts. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

HOUSE BILL 1048 PCS:
DWI Task Force Recommendations

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 7, 2006
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	PCS to Third Edition H1048-CSRK-40		Committee Co-Counsel

SUMMARY: ***This bill, based upon the findings of the Governor's Task Force on Driving While Impaired, provides measures relating to DWI arrest, enforcement, education, and training. The measures have varying effective dates.*** *[ATTACHMENT -- Bill and PCS Comparison]*

BILL ANALYSIS:

PART I – REGULATING MALT BEVERAGE KEGS

Section 1: Amends the law to require a purchase-transportation permit for the purchase and off-premises transportation of a keg of malt beverage. Retailers of keg malt beverages would be authorized to issue purchase-transportation permits, and would be required to maintain sales records for one year.

Section 2: Conforming changes.

PART II – MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

Section 3: Amends the statute regulating impaired driving checkpoints. The provision

- Creates a single "checking station" or "roadblock" instead of "impaired driving" checkpoints and "driver's license" checkpoints. Impaired driving checkpoints are statutorily regulated; however, the requirements for driver's license checkpoints are derived from case law.
- Requires the law enforcement agency (LEA) to designate in advance the pattern for stopping vehicles and for the production of a driver's license, a registration card, or insurance information. An individual officer would not have the discretion to determine which drivers would be required to produce a driver's license, registration, or insurance information.
- Requires that at least one LEA vehicle have its blue lights in operation.
- If an officer determines that the driver has previously consumed alcohol, or has an open container, the officer may conduct an alcohol screening test.
- Provides that checkpoints should be random and not repeatedly located in the same location.

Part III – PROVIDING FOR IMPLIED CONSENT PRETRIAL AND COURT PROCEEDINGS

Section 4: This Part would create a new Article in Chapter 20 to provide pretrial procedures for implied consent offenses. An "implied consent offense" is defined by statute as an offense involving impaired driving or an alcohol-related offense subject to the procedures in N.C.G.S § 20-16.2, Implied Consent to Chemical Analysis.

§ 20-38 provides that the procedures are mandatory for the investigation and processing of an implied-consent offense. The trial procedures apply to any implied-consent offense litigated in District Court.

§ 20-38.1 provides for extraterritorial jurisdiction for officers who are seeking evidence of a driver's impairment in the course of investigating an implied consent offense or vehicle crash.

§ 20-38.2 Upon an arrest, a law enforcement officer

- must inform the person why they're being arrested;
- may take the person for a chemical analysis, inside or outside of their personal jurisdiction, at the request of any law enforcement officer, and for any evaluation to determine the extent or cause of impairment;
- may take the person to some other location to be identified, to complete a crash report, or for some other lawful purpose;
- may take photographs and fingerprints in accordance with law; and
- must take the person before a judicial official for an initial appearance after the completion of all other procedures.

§ 20-38.3 governs the initial appearance before a magistrate. The provisions modify the current procedures in effect for an appearance before a magistrate. The modifications include

- A requirement that, to the extent practicable, the magistrate is to be available at locations other than the courthouse for an initial appearance.
- If probable cause is found, a requirement that the magistrate consider whether the provisions of § 15A-534.2 should be invoked.

§ 20-38.4 requires the Chief District Court Judge, the Department of Health and Human Services (DHHS), the District Attorney and the Sheriff to

- Establish written procedures for attorneys and witnesses to have access to the chemical analysis room.
- Approve the location of written notice of implied consent rights in the chemical analysis room.
- Approve a procedure to allow a person who is denied pretrial release to have access to outside chemical analysis.

Initially, the Department of Transportation would be required to post signs that explain to the public how to access the chemical analysis room. The county would then be required to maintain any signs for county buildings and the courthouse. If the analysis instrument is in a State or municipal building, then the head of the highway patrol for the county, or the police chief, will be responsible for signs and access instead of the Sheriff.

§ 20-38.5 provides for motions and trial procedures in district court:

- Motions to suppress and dismiss (except for insufficiency) must be made prior to trial.
- Pretrial motions must be in writing and delivered to State at least seven days before any hearing.

- The judge may summarily grant or deny a motion to suppress, or hold a hearing. Findings of fact and conclusions of law must be in writing.

§ 20-38.6 provides for appeals from district court:

- The State may appeal a pretrial suppression of evidence or dismissal of charges to superior court for a *de novo* hearing.
- The defendant may appeal denial of a pretrial motion upon conviction.

Any conviction that is appealed to superior court may not be remanded back to district court unless the prosecutor and superior court consent. The defendant's decision to seek a trial de novo results in a vacation of the sentence. Upon withdrawal of the appeal or remand by the Superior court to the district court, the district court shall hold a new sentencing hearing and take into account any new convictions. The district court shall delay sentencing until any pending charges are resolved.

Part IV -- ALLOWING OPINION TESTIMONY BY DRUG RECOGNITION AND ACCIDENT RECONSTRUCTION EXPERTS, AND ADMISSION OF HGN TESTS.

Section 5. This Part amends the State Evidence Code by adding a new Rule that:

- Allows the admission of the results of a Horizontal Gaze Nystagmus (HGN) Test into evidence. Opinion testimony by a person who has completed HGN training would be admissible on whether the results are consistent with a chemical analysis, or consistent with a person who is under the influence of a particular type or class of impairing substances.
- Allows a Drug Recognition Expert (DRE) to give opinion testimony that
    - A person is was under the influence of one or more impairing substances
    - The impairing substance belongs to a category of impairing substances

  The opinions are admissible if the DRE holds a current certification as a DRE, issued by the Department of Health and Human Services (DHHS).
- Allows an accident reconstruction expert to give an opinion as to the speed of a vehicle--even if the expert did not see the vehicle moving--if the expert has
    - performed a reconstruction of a crash, or
    - has reviewed the report of investigation

The new Rule provides that it shall not be construed to prohibit cross-examination of any person expressing an opinion, and the basis for their opinion. Opinion testimony that is otherwise admissible is not prohibited by the new Rule.

The GTF Report notes that the DRE program began in California, due to drivers who had less than .08 BAC, but were impaired by something other than alcohol. The training is highly technical, and involves recognition of signs of impairment, including behavior, eye movement, and performance on standard field sobriety tests. The Report also notes that HGN is "among the most effective sobriety tests that are administered by officers."

In North Carolina, whether a scientific method is accepted as the basis for admission of evidence depends upon the reliability of the scientific method and not its popularity within a scientific community. "[W]hen no specific precedent exists, scientifically accepted reliability justifies admission

of the testimony ... and such reliability may be found either by judicial notice or from the testimony of scientists who are expert in the subject matter, or a combination of the two." *State v. Bullard*, 312 N.C. at 148.

The GTF Report states that "most states allow crash reconstructionists to give an opinion of speed at time of impact" and that the "physics of a crash and the mathematical formulas are generally accepted in the scientific community."

Part V — ALCOHOL SCREENING DEVICES

Section 6:

Makes technical changes and changes the current law to allow screening tests as evidence in court and administrative proceedings.

Part VI – CLARIFICATION OF IMPAIRED DRIVING OFFENSES

Section 7:

Makes technical corrections and clarifies that "public vehicular areas" include business property, whether the business is open or closed. Also defines "keg" for purposes of the Chapter.

Sections 8 and 9:

- Clarifies the *per se* impaired driving offense for non-commercial and commercial drivers. The Task Force found that some judges do not accept the Intoxilyzer reading as sufficient evidence of impairment, and have required additional evidence of impairment. The statute is amended to clarify existing law that the results of a chemical analysis are sufficient to prove a person's alcohol concentration, and that a person may have a person of their own choosing conduct a chemical analysis of a blood sample. By statute, the results of a defendant's alcohol concentration determined by a chemical analysis are reported to the hundredths.
- Adds the consumption of any amount of Schedule I or II controlled substances as the basis for a DWI violation for both commercial and non-commercial drivers. Also provides a defense to the charge if the controlled substance is lawfully prescribed and taken in therapeutically appropriate amounts.
- Provides the methods of proving the Gross Vehicle Weight for the commercial vehicles.

Section 10:

Creates a deferred prosecution option for persons charged with driving under the age of 21 after having consumed any amount of alcohol. This allows the person to obtain a dismissal after completing an assessment and treatment or education, a period of non-operation, and doing community service, as well as meeting some additional conditions.

Section 11:

Amends the Habitual DWI statute to apply to any person who has 3 previous DWI convictions within a 10 year period. Currently, the law applies to anyone who has 3 previous DWIs within a 7 year period.

Section 12:

Clarifies that required procedures and evidentiary provisions applicable to chemical analyses apply to the immediate license revocation statute.

PART VII – FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

Section 13:

Creates three new offenses: Felony Serious Injury by Vehicle, Aggravated Felony Death by Vehicle, and Aggravated Felony Serious Injury by Vehicle.

- Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired is guilty of a Class F felony.
- Aggravated Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class E felony.
- Aggravated Felony Death -- A person who unintentionally causes the death of another while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class D felony.

Under current law, unintentionally causing a death (not impaired) while violating a statute or ordinance is a Class 1 misdemeanor. The bill would increase the penalty for unintentionally causing death while impaired from a Class G felony to a Class E felony.

The bill also creates the offense of "Repeat Felony Death by Vehicle." A person who has a previous conviction for causing a death while impaired, and is convicted a second time for a felony death by vehicle, is subject to punishment under the second degree murder statute (Class B2 felony).

Part VIII – CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT

Section 14

This part adds clarifying language to G.S. 20-16.2. The part

- Allows any law enforcement officer to perform the chemical analysis (not just the arresting officer).
- Changes the standard of review by the superior court when a license revocation for refusal to submit to chemical analysis is appealed. Currently, the review is a *de novo* review, meaning the superior court hears all the evidence again. This part would change the review to limit it to whether there is (i) sufficient evidence in the record to support the Commissioner's findings of fact, (ii) whether the conclusions of law are supported by the findings of fact and (iii) whether the Commissioner committed an error of law in revoking the license.

Part IX – ADMISSIBILITY OF CHEMICAL ANALYSES

Section 15

This part

- Provides the requirements for the admissibility of a chemical analysis of a person's breath. To be admissible, the analysis must:

  - Be performed in accordance with Department of Health and Human Services rules
  - Have been performed by a person holding a permit issued by DHHS authorizing the person to perform a test of the breath using the type of instrument employed

- Amends the statute governing admissibility of chemical analyses to allow the court to take notice of the DHHS rules and persons authorized to administer the analyses. DHHS is required to post on a webpage and file in each county a list of all persons who have a permit authorizing them to perform chemical analyses.
- Provides for procedures for establishing the chain of physical custody or control of blood and urine samples. Authorizes the admission of tests on blood or urine if submitted on a form approved by the Attorney General without further authentication. This part restricts the issuance of a subpoena for the chemical analyst unless the subpoena is found to be necessary by the court.
- Provides for a hearing on the admissibility of evidence if the defendant notifies the State at least five (5) days before trial in the superior court division or an adjudicatory hearing in juvenile court.
- Provides that a law enforcement officer may compel, without a court order, a person to provide a blood or urine sample from a person who has refused a test if circumstances require that a test be conducted without a warrant.

Part X – IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

Section 16

- Requires any healthcare provider who is providing medical treatment to a crash victim to provide a law enforcement officer with the crash victim's name, location, and whether the person appears to be impaired.
- Requires the healthcare provider to allow an investigating officer access to visit and interview the person upon request.
- Authorizes an investigator to obtain a certified copy of medical records if they obtain a search warrant or an order specifying the records.
- Provides that certified copies of relevant health information are admissible in any hearing or trial without further authorization.

Section 17

Provides conforming language in the evidence code to reflect the changes set forth in Section 16.

Part XI – PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

Section 18

Amends the current provision which requires a prosecutor to document the reasons behind the reduction or dismissal of impaired driving or driving while license revoked for impaired driving charges.

- Requires the prosecutor to sign a written explanation on an approved form containing the items listed in the statute. The form must be sent to the head of the law enforcement agency employing the charging officer, to the district attorney who employs the prosecutor, and filed in the court file.
- Requires the Administrative Office of the Courts to electronically record the information, and make it available upon request.

Section 19.1

- Requires the clerk of court to keep specific file data on persons charged with impaired driving offenses, including:
    - reasons for dismissal, continuances,
    - suppression of evidence,
    - reduction of charges, or waivers of fines;
    - punishments;
    - compliance with orders; and
    - subsequent court proceedings to enforce sentences or payments of fines, costs, and fees.

Section 19.2

Requires the AOC to maintain the data described in Section 1, and provide an annual report (by calendar year) to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The report is to include the amount of fines, costs, and fees ordered at disposition, and defendants' compliance with sanctions. The AOC is charged with insuring public access to the information by posting it on the agency's internet page, and making the report available to the public at no cost.

Part XII – NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED

Section 20

This section provides that the Division of Motor Vehicles may prove notice of personal delivery, or by mail, by making a notation in its records. A certified copy of the Division's records would be admissible in any court or administrative agency proceeding as proof of notice.

Section 21

Under this amendment, a person is also guilty of a Class 1 misdemeanor if

- The Division has sent a notice of revocation of license for driving while impaired, and the person drives on a highway with a revoked license.
- The person fails to appear for two years from the charge date if charged with an implied consent offense.

Upon conviction, the person license is revoked an additional year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The bill provides that if the license was revoked for a reason stated above, the person may only apply after one year. If a person's license

was revoked due to one of the specified offenses, a conditional restoration requires the person to obtain a substance abuse assessment (and complete any required education or treatment), and show proof of financial responsibility.

The Division may also require the installation of ignition interlock on vehicles, and may cancel conditionally restored licenses if any conditions of restoration are violated. The Division may also cancel vehicle registrations and require the surrender of cards and plates.

PART XIII – MODIFYING CURRENT PUNISHMENTS

Section 22

In *Blakely v. Washington*, decided by the United States Supreme Court in June 2004, the Court held that the facts supporting the imposition of a sentence longer than the statutory maximum must be found by a jury beyond a reasonable doubt, or be admitted by the defendant. In *State v. Allen*, the North Carolina Court of Appeals, in applying Blakely under North Carolina's Structured Sentencing Act, held that the existence of aggravating factors that will increase a felony sentence beyond that which is permitted under the presumptive range must be found by a jury beyond a reasonable doubt, or be admitted by the defendant.

Chapter 20 also includes sentencing provisions that rely on the proof of aggravating factors. Consequently, based upon the holding in *Blakely*, the amendments in these sections provide the procedures for holding a sentencing hearing in Superior Court. A jury would find the aggravating factors necessary for enhanced punishment. The judge is not required to allow proof of aggravating factors to the jury if the defendant stipulates to their existence.

The procedures allow for a defendant to admit to the aggravating factor only, or plead guilty only to the charge. A judge may find the existence of prior convictions without a jury determination. The State must provide notice of its intent to use one or more aggravating factors if the defendant appeals to Superior court.

The bill provides that a defendant sentenced to a term of imprisonment that is 48 hours or more must serve the term hour for hour. Consequently, a defendant arriving at a confinement facility on a Friday evening would not be eligible for release on Sunday morning, although two "days" have passed.

A defendant reporting to jail that shows positive on an alcohol screening test would forfeit any option to serve confinement time on weekends.

Section 23

Requires the clerk of court to keep for a minimum of ten years all records relating to persons charged with impaired driving offenses. Prior to destroying the record, the clerk is required to record the data specified in the provision.

Section 24

Repeals revocation and notice procedures that are superseded by other provisions in the bill.

PART XIV – ILLEGAL CONSUMPTION UNDER 21 AND ADMISSIBILITY OF THE RESULTS OF AN ALCOHOL SCREENING DEVICE

Section 25

The section makes it illegal for a person less than 21 years of age to consume any alcoholic beverages. The exceptions are:

- during the course of treatment by a licensed physician, druggists, or dental surgeons for medicinal or pharmaceutical purposes, or by medical facilities established and maintained for the treatment of addicts;
- for sacramental purposes by any organized church or ordained minister; and
- under the direct supervision of an instructor during a culinary class that is part of a curriculum at an accredited college or university.

The bill authorizes a law enforcement officer to administer a screening test to a person less than 21 years of age if there is probable cause that the person has consumed alcohol. The test result would be admissible in any court or administrative proceeding.

PART XV – DWI DEFENDANTS ASSIGNMENT TO COMMUNITY SERVICE PAROLE OR HOUSE ARREST

Section 26

This section requires that any impaired driving offender that has completed recommended treatment or a training program, and is not being paroled to a residential treatment program, shall as a condition of parole, be placed on

- community service parole, or
- house arrest with electronic monitoring.

PART XVI – PREVENT NONCOMPLIANT PERMIT HOLDERS FROM SWITCHING PERMITS

Section 27

The bill provides that a permittee may not employ someone who has been a permit holder and who has had their permit revoked within three years. This is designed to prevent a current permit holder who becomes ineligible from using a surrogate to be the designated permit holder, while remaining in charge of the business.

PART XVII – DWI TRAINING FOR JUDGES

Section 28

Requires all justices and judges in the General Court of Justice to receive a minimum of two hours of continuing judicial education, every two years, on DWI issues.

PART XVIII – REQUIRE DA SIGNATURE FOR A DISTRICT COURT MOTION FOR APPROPRIATE RELIEF

Section 29

The section provides that a motion for appropriate relief (MAR) may not be granted without the signature of the District Attorney. An MAR is a pleading by the defendant seeking relief from a judgment of the court. If the defendant gives notice by oral motion in court, or written notice to the District Attorney, then the court may grant the motion if the DA has not signed 10 days after receipt of notice.

PART XIX – EFFECTIVE DATE

Section 30

The requirement that the AOC electronically record certain data (see Section 18, above) becomes effective after the next rewrite of the Superior Court Clerks System. Section 22 is effective when it becomes law. The remainder of the act becomes effective on December 1, 2006, and applies to offenses committed on or after that date.

H1048-smrk-csrk-001

Summary contribution by Susan Sitze, Staff Attorney.

ATTACHMENT TO
SUMMARY, H1048-CSRK-40
Senate Judiciary I
June 1, 2006

COMPARISON -- HOUSE BILL 1048 AND SENATE BILL 1048 PCS

Subject Area	House Bill 1048	Senate PCS
Regulating Kegs	Sections 1 & 2	Sections 1 & 2
Checking Stations	Sec. 3 – no written plan if a written policy	Sec. 3 – (1) no req.'ment for a written plan or policy; (2) deletes "near a business selling alcohol" on repeated checkpoints and provides that repeated checkpoints in the same location or proximity should be avoided.
Implied Consent Procedures	Section 4	Section 4 – (1) removes out-of-State application in 20-38.1 and gives State-wide jurisdiction (2) Adds that Dist. Ct. sentence is vacated on appeal to Sup. Ct.
Allow Testimony/Opinion	Section 5	Section 5 (1) removes "in accordance with training" after test name.
Alcohol Screening Devices	Section 6	Section 6

Clarification of Impaired Driving Offenses	Sections 7 – 14 (1) removes "by the public" for regulated areas (2) creates a "third" method of proving DWI (3) removes exemption for horses, bicycles, or lawnmowers (4) changes .04 level for DWI for commercial vehicles to 0.00	Sections 7 – 12 (1) retains "by the public" for regulated areas (2) no third method—clarifies per se .08 burden (3) keeps exemption for horses and bicycles (4) keeps .04 level for commercial vehicles
Felony Death by Vehicle; Felony Serious Injury by Vehicle	Section 15 – (1) makes felony death by vehicle a Class D felony (2) makes felony serious injury by vehicle a Class E felony	Section 13 – (1) makes felony death by vehicle a Class E felony (2) makes felony serious injury by vehicle a Class F felony (3) adds aggravated offenses (4) adds repeat felony death offense
Clarify Implied Consent Law	Section 16	Section 14
Admissibility of Chemical Analysis	Section 17	Section 15 (1) adds language to provision allowing officer to compel blood/urine sample
Improved Access to Medical Records	Section 18	Sections 16 and 17 (1) adds provision exempting information from any applicable privilege
Prosecutor Reporting	Section 19	Section 18

Impaired Driving Data Systems Data System Report		Section 19.1 Section 19.2

Notice Procedure and Driving While License Revoked	Sections 20 and 21	Sections 20 and 21 (1) re-drafts req.'ments for cond. license where revoked under specified sections (2) Identifies vehicles subject to cancellation of registration and plate surrender
Modify Punishments	Sections 22 -- 24	Sections 22 -- 24
Illegal consumption under 21 years	Section 25 and 26	Section 25 (1) adds technical addition for 19 and 20 year olds
Parole of DWI defendants	Section 27	Section 26
Prevent Switching Names of Permit Holders		Section 27
DWI Training for Judges		Section 28
Require DA signature on MAR filing		Section 29
Effective Date	Section 28	Section 30

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

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

H1048-ARK-41 [v.3]

Date 6-13-06 ,2006

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

Senator Rand

moves to amend the bill on pages _____, lines _____through_____, by rewriting those lines to read:

"PART I. REGULATING MALT BEVERAGE KEGS

"SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(7b) "Keg" means a portable container designed to hold and dispense in excess of eight gallons of malt beverage.""

SECTION 2. Chapter 18B is amended by adding a new section to read:

"**G.S. 18B-403.1. Purchase-Transportation Permit for Keg or Kegs of Malt Beverages**.

(a) Purchase-transportation. A person who is not a permittee may purchase and transport for off-premises consumption a keg or kegs as defined in G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a purchase-transportation permit according to this section is a violation of 18B-303(b).

(b) Issuance. A person holding a permit pursuant to 18B-1001(2) may issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser. A copy of the purchase-transportation permit shall be maintained by the permittee for 30 days.

(c) Form. A purchase-transportation permit shall be issued on a printed form adopted and provided by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(d) Restrictions on Permit. A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the by the purchaser, and one by the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

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

H1048-ARK-41 [v.3]

permittee from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request.

(e) Violation. The first violation of this section shall result in a warning to the permittee.

SECTION 2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~ beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg or kegs of malt beverages for off-premises consumption, the permit required by G.S. 18B-403.1(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~ kegs for on-premise consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined.""

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H1048-ASA-34 [v.1]

Date 6-13- ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1048-CSRK-40 [v.27]

Senator Nesbitt

moves to amend the bill on page ____, line ___
by inserting new sections to read:

"**SECTION** ___. G.S.20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. – ~~When~~ Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.'

SECTION ___. G.S. 20-17.8 is amended by adding a new subsection to read:

'(l) Medical Exception to Requirement. – A person subject to this section who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system, may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

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

H1048-ASA-34 [v.1]

interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4).'

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H1048-ASA-32 [v.1]

Date 6-13-06 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1048-CSRK-40 [v.27]

Senator Nesbitt

moves to amend the bill on page 10, line 2,
by rewriting that line to read:
"G.S.90-89 or G.S.90-90, or its metabolites in his blood or urine, and there is evidence of impairment."

And on page 10, line 35,
by rewriting that line to read:
"G.S.90-89 or G.S.90-90, or its metabolites in his blood or urine, and there is evidence of impairment."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

H1048-ASA-33 [v.1]

Date 6-13-06 ,2006

Comm. Sub. [YES]
Amends Title [YES]
H1048-CSRK-40 [v.27]

Senator Nesbitt

moves to amend the bill on page ___, line ___
by inserting a new section to read:

"**SECTION __.** G.S. 20-17(a)(2) reads as rewritten:

'(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(2) Impaired driving under G.S. 20-138.1. ~~Either of the following impaired driving offenses:~~

~~a. Impaired driving under G.S. 20-138.1.~~

~~b. Impaired driving under G.S. 20-138.2.~~'

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1:00 PM

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6/13/06
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Bill Baker	—
IKE Avery	Avery PC Raleigh, NC
AL EISELE	DHHS
C Matthews	DMV
Lina Vogel	victim's parent
Megan Glazier	Rep. Glazier
Emily Garrett	AOC
Troy Hite	N.C. Sentencing Commission
Matt Osborne	AOC
Gail Glotzberger	ACLU-NC

VISITOR REGISTRATION SHEET

1:00 P.M.

JUDICIARY 1 COMMITTEE
Name of Committee

6/13/06
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rebekah Goncarova	ACLU NC
Chad Hinton	Civitas Institute
[illegible] Pond	Civitas Institute

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 15, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1204	Jessica's Law/Strengthen Sex Offender Laws.	Senator Allran
SB 1216	DSS Disclosure of Information/Abuse/Neglect.	Senator Boseman
SB 2010	Aircraft Mechanics' Lien.	Senator Hagan

Senator Daniel G. Clodfelter, Chair

Judiciary I Committee

June 15, 2006

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:02 a.m. with seventeen members present. He introduced Pages, Brittany Brinson, from Durham, NC, Stephanie Smith, Brandon Cooke, and Taylor Warren, from Raleigh, NC, Julian Quesada, from Apex, NC, Natalie Baker, and Adam Lanier, from Tarboro, NC, and Nick Sipes, from Greensboro, NC.

SB-1216 (DSS Disclosure of Information/Abuse/Neglect) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Julia Boseman explained that the bill would require a department of social services to share information received by the department in connection with abuse, neglect and dependency reports and assessments currently held in confidence, with any federal, State or local governmental entity or its agent that needs confidential information to protect a juvenile from abuse and neglect. (See Bill Summary for further information) Senator's Richard Stevens and Phillip Berger had questions. Ms. Joan Lamb, NC Director of Division of Social Services, spoke on the bill and answered questions. Senator Boseman offered an Amendment to the bill on Page 2, Line 3. (See attached Amendment). Senator Charlie Albertson moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

SB-2010 (Aircraft Mechanics' Lien) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator Kay Hagen explained that the bill would create a process for filing and enforcing statutory liens for unpaid labor, skill or materials on an aircraft and for unpaid storage of an aircraft. (See attached Bill Summary for further information). Senator's Charlie Albertson, R.C. Soles and Phillip Berger had questions. Mr. Andrew Haile, Legal Counsel for Brooks, Pierce, McLendon, Humphrey & Leonard Attorneys at Law, Greensboro, NC, Ms. Elizabeth Taylor MeHaffey, Vice President, TIMCO Aviation Services in Greensboro, NC, and Mr. Pete Powell, NC Administrative Office of The Courts, spoke on the bill and answered questions. Staff attorney, Walker Reagan also answered questions. Senator David Hoyle

moved for a Favorable Report. All members voted yes. Motion carried. Senator Clodfelter stated the bill would be sent to the Finance Committee.

SB-1204 (Jessica's Law/Strengthen Sex Offenders Laws) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Hal Pell explained that this act amends the sex offender registration statutes, imposes electronic monitoring requirements, and appropriates funds for the purposes of the act. (See attached Bill Summary for further information). Senator Austin Allran, bill sponsor, spoke on the bill. Senator's Phillip Berger, Charlie Albertson, David Hoyle, Tony Rand, R.C. Soles and Clark Jenkins had questions. Mr. Pell. and Mr. Ashley Ray, from the NC Attorney General's Office, answered the questions. Senator Peter Brunstetter had questions, and offered Amendment #1 to the bill on Page 6, Line 8. (See attached Amendment). All members voted yes. Amendment was adopted. Senator R.C. Soles offered Amendment #2, on Page 6, Line 25. (See attached Amendment). All members voted yes. Amendment was adopted. (See attached Amendment). Mr. Greg McCloud, from the NC Attorney General's Office spoke on the bill. Senator Clarke Jenkins moved for a Favorable Report. All members voted yes. Motion carried. Senator Clodfelter stated that the bill would be sent to Appropriations Committee.

Being no further business the meeting adjourned at 10:45 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, June 19, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

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

S.B. **1204** Jessica's Law/Strengthen Sex Offender Laws.

Draft Number:	PCS75542
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1216** DSS Disclosure of Information/Abuse/Neglect.

Draft Number:	PCS55500
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **2010** Aircraft Mechanics' Lien.

Draft Number:	PCS75543
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

Final

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 1216
PROPOSED COMMITTEE SUBSTITUTE S1216-PCS55500-RU-87

Short Title: DSS Disclosure of Information/Abuse/Neglect. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT ALLOWING LOCAL DEPARTMENTS OF SOCIAL SERVICES TO SHARE CONFIDENTIAL INFORMATION WITH OTHER CHILD PROTECTION ORGANIZATIONS WHEN THE CONFIDENTIAL INFORMATION IS NEEDED TO PROTECT A CHILD FROM ABUSE AND NEGLECT.

The General Assembly of North Carolina enacts:

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

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the

department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1216

Short Title:	DSS Disclosure of Information/Abuse/Neglect.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Rules and Operations of the Senate.	

May 10, 2006

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strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1216

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

S1216-ARU-72 [v.2]

Date 6-15 ,2006

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

Senator Bosemon

moves to amend the bill on page 2, line 3,
by deleting the word "neglect."" and substituting the words "neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 1048 -- PROPOSED COMMITTEE SUBSTITUTE

AMENDMENTS TO ORIGINAL BILL

Senate Judiciary I Committee
June 15, 2006

1. Removes the provisions that required reporting with 48 hours (release from institution; intent to move out of state; verification from receipt of form)

2. Sheriff to take photograph if record photograph not an accurate license, instead of registrant providing photograph during submission of verification documents

3. Deletes requirement that law enforcement agencies provide registrant's photo, address, and other information to specified schools within one-mile radius of registrant's address.

4. Rewrites provision limiting where sexual predators and others with a lifetime registration requirement can work.

5. Rewrites GPS provision for consistency with Senate Budget provision.

SENATE BILL 1216:
DSS Disclosure of Information/Abuse/Neglect

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 15, 2006
Introduced by:	Sen. Boseman	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: Senate Bill 1216 would require a department of social services to share information received by the department in connection with abuse, neglect and dependency reports and assessments currently held in confidence, with any federal, State or local governmental entity or its agent that needs confidential information to protect a juvenile from abuse and neglect.

CURRENT LAW: Currently, reports of abuse, neglect or dependency, received by the department of social services, including information obtained as part of the department's investigative assessment and evaluation, are required to be held in strictest confidence by the department. This includes the identity of the person who reports the abuse, neglect or dependency. There are no exceptions to this requirement for confidentiality.

BILL ANALYSIS: Senate Bill 1216 would amend the confidentiality provisions of the abuse, neglect and dependency reporting, investigative, and assessment law to require departments of social services to disclose confidential information to any federal, State or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

S1216e1-SMRU

Final

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 2010
PROPOSED COMMITTEE SUBSTITUTE S2010-PCS75543-RU-86

Short Title: Aircraft Mechanics' Lien. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATUTORY LIEN FOR UNPAID LABOR, SKILL, OR MATERIALS ON AN AIRCRAFT AND FOR UNPAID STORAGE OF AN AIRCRAFT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 44A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Aircraft Labor and Storage Liens.

"**§ 44A-50. Definitions.**

As used in this Article, the following terms mean:

(1) Aircraft. – As the term is defined in G.S. 63-1(3), or any engine, part, component, or accessory, whether affixed to or separate from the aircraft.

(2) Lienor. – A person entitled to a lien under this Article.

(3) Owner. – As the term is defined in G.S. 44A-1(3) for an aircraft, or any person authorized by an owner, as defined in G.S. 44A-1(3), to perform, contract, or arrange for the provision of labor, skill, materials, or storage with respect to any aircraft.

(4) Person. – Any individual, corporation, association, partnership, whether limited or general, limited liability company, or other entity.

"**§ 44A-55. Persons entitled to a lien on an aircraft.**

Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a lien on the aircraft beginning on the date the expenditure of labor, skill, or materials or the storage commenced, for the contract price for the expenditure of labor, skill, or materials or for the storage, or, in the absence of a contract price, for the reasonable worth of the

expenditure of labor, skill, or materials, or of the storage. The lien under this section survives even if the possession of the aircraft is surrendered by the lienor.

"**§ 44A-60. Notice of lien on an aircraft.**

(a) The lien under G.S. 44A-55 expires 90 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 90-day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.

(b) The notice of lien shall state all of the following:

(1) The name of the lienor.

(2) The name of the registered owner of the aircraft, if known.

(3) The name of the person with whom the lienor entered into a contract for labor, skill, or materials on the aircraft, or storage of the aircraft.

(4) A description of the aircraft sufficient for identification.

(5) The amount for which the lien is claimed.

(6) The dates upon which the expenditure of labor, skill, materials, or storage was commenced and completed, or, if not completed, the date through which the claimed amount is calculated.

(c) The notice of lien shall be sworn to or affirmed, and subscribed by the lienor, or by someone on the lienor's behalf having personal knowledge of the facts.

(d) The notice of lien shall be in substantially the following form:

'NOTICE OF LIEN ON AIRCRAFT

[Lienor] Lienor, v. [Owner] Owner

Notice is hereby given that [Lienor](name) claims a lien upon _____[aircraft](describe the aircraft) for labor, skill, or materials expended on, and for storage furnished for, this aircraft; that the name of the registered owner or reputed owner, if the aircraft is not registered or the registered owner is not known, is [Owner](name), that the labor, skill, or materials were expended on the aircraft commencing the ____ day of ____, and storage was furnished on the aircraft commencing the ____ day of ____, and the labor, skill, materials, and storage furnished by the lienor [was completed] [is ongoing] on the ____ day of ____; that 90 days have not elapsed since the aircraft was released by the lienor; that the amount lienor demands for the labor, skill, materials, and storage furnished, as of the date hereof is $_____(amount); that no part thereof has been paid except $_____(amount); and that there is now due and remaining unpaid, after deducting all credits and offsets, the sum of $_____(amount), in which amount [Lienor](name) claims a lien upon the aircraft.

(Signed) _____ (Lienor)

Address of Lienor _____

State of North Carolina

County of _____

Sworn to (or affirmed) and subscribed before me this day by [name of principal].
Date: _____ [Official Signature of Notary]
_____ [Notary's printed or typed name], Notary Public
My Commission Expires:[Date]
[Official Seal]'

"**§ 44A-65. Notice of lien filed by the clerk of court.**

Upon presentation of a notice of lien pursuant to this Article, the clerk of court shall file the notice of lien and shall index the notice of lien in a record maintained by the clerk for that purpose.

"**§ 44A-70. Priority of a lien on an aircraft.**

The lien under this Article shall have priority over perfected and unperfected security interests.

"**§ 44A-75. Termination of a lien on an aircraft.**

Any lien under this Article shall be terminated upon receipt by the lienor of the full amount owed for the labor, skill, or materials on the aircraft, and for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lienor. Upon receipt of the amount owed, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor, and shall, within 20 days following a request in writing by the aircraft owner, file with the clerk of court a notice of satisfaction of lien, if a notice of lien has been filed by the lienor. A notice of satisfaction of lien shall state that the amount owed for the lienor's expenditure of labor, skill, or materials on the aircraft, and for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction of lien shall be sworn to or affirmed, and subscribed by the lienor or by someone on the lienor's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction of lien, the clerk of court shall make an entry of acknowledgment of satisfaction in the index. The owner of the aircraft may also file with the clerk of court any written document that shows or tends to show the nonexistence, satisfaction, or termination of the lien, which written document shall also be indexed by the clerk of court in the index.

"**§ 44A-80. Fees.**

(a) The clerk of court may charge for filing any document under this section a fee of twelve dollars ($12.00) for the first four pages, plus one dollar ($1.00) for each additional page.

(b) The clerk of court may charge a fee for furnishing a certified copy of any document filed with the clerk of court under this section. The amount of the fee shall be the same as the fee received for furnishing certified copies of any other instruments recorded by the clerk of court.

"**§ 44A-85. Enforcement of lien by sale.**

A lien filed under this Article may be enforced in accordance with G.S. 44A-4, and the proceeds of sale shall be applied as set forth in G.S. 44A-5.

"**§ 44A-90. Title of purchaser.**

(a) A purchaser for value at a properly conducted sale under this Article, and a purchaser for value without constructive notice of a defect in the sale, whether or not the purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority.

(b) Upon the completion of a sale conducted under this Article, the lienor or a person acting on behalf of the lienor, who conducted the sale shall furnish to the purchaser for value a bill of sale for the aircraft signed by the person who conducted the sale that includes a statement that the sale was conducted in accordance with this Article."

SECTION 2. G.S. 44A-2(a) reads as rewritten:

"(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle or an aircraft in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or
(2) The contract price; or
(3) One hundred dollars ($100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests."

SECTION 3. This act becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.

SENATE BILL 2010:
Aircraft Mechanics' Lien

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Finance	**Date:**	June 15, 2006
Introduced by:	Sen. Hagan	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition S2010-CSRU-86		

SUMMARY: The Proposed Committee Substitute for Senate Bill 2010 would create a process for filing and enforcing statutory liens for unpaid labor, skill or materials on an aircraft and for unpaid storage of an aircraft.

CURRENT LAW: G.S. 44A-2(a) grants a lien in personal property, other than a motor vehicle, that a person tows, alters, repairs, stores, services, treats, or improves in the ordinary course of business pursuant to an express or implied contract. The lien is for the contract amount or the reasonable charges for the services and materials. There is no provision for a notice of lien to be filed in connection with this lien.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 2010 would create a procedure under which an aircraft mechanic could file a notice of lien for labor, skills and material on an aircraft or for storage of an aircraft when the charges for these services and materials are not paid.

G.S. 44A-50 contains definitions. The definition of an aircraft includes parts of an aircraft furnished, whether or not those parts are affixed to the aircraft.

G.S. 44A-55 grants a lien to a person who provides labor, skills or materials on an aircraft or who stores an aircraft at the request of the owner. The amount of the lien is the contract price for the work or storage, and if no contract, the reasonable worth of the service. The lien survives even if possession is surrendered.

G.S. 44A-60 provides for the filing of a notice of lien with the clerk of court. If possession of the aircraft has been surrendered, a notice must be filed with 90 days of the release of the aircraft in order for the lien to continue.

G.S. 44A-70 gives these liens priority over other perfected and unperfected security interests in the aircraft.

G.S. 44A-75 requires the lienor to release possession of the aircraft upon payment and to file a notice of satisfaction of lien with the clerk.

G.S. 44A-85 provides for the process for enforcing the lien by sale and specifies how the proceeds of the sale are to be distributed. G.S. 44A-4 (attached) permits the aircraft to be sold by public or private sale if the lien is not satisfied within 30 days following the date of maturity. This statute requires notice of the sale to be given to the owner, permits the owner to stay the sale by filing suit contesting the amount of the lien, permits the owner to obtain possession of the aircraft by depositing the amount of the lien with the clerk, sets out the procedures to be followed for conducting a private or a public sale. G.S. 44A-5 (attached) allows the proceeds of the sale to be used to cover the cost of the sale, payment of the obligation secured by the lien, and payment of the balance to the owner.

G.S. 44A-90 provides for the transfer of title to the purchaser of value at a lien sale by a bill of sale.

Section 2 makes a conforming change to the statute granting liens for services on other personal property.

EFFECTIVE DATE: The bill becomes effective October 1, 2006 and applies to work furnished or storage provided on or after that date.

BACKGROUND: Federal law, through the Federal Aviation Authority (FAA), governs how title to aircraft are registered and transferred. Under federal law, in order to perfect a security or lien interest in an aircraft, a notice

of lien, as permitted under state law, must be filed with the FAA. Because North Carolina, unlike many other states, does not have a process permitting the filing of a notice of lien for mechanics' work on and storage of aircraft, NC mechanics cannot get a secured lien interest on aircraft they service even though NC law grants a lien interest in the aircraft for their charges

Also, because this charges, although a lien on the aircraft, cannot be secured under federal law, under the bankruptcy laws, these liens are not treated as secured so NC mechanics lose the benefit of their liens when the owner of an aircraft they have provided services to files bankruptcy. Mechanics in other states that provided a method for filing a notice of lien are treated as secured creditors under the bankruptcy law.

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§ 44A-4. Enforcement of lien by sale.

(a) Enforcement by Sale. – If the charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 30 days or. in the case of towing and storage charges on a motor vehicle, 10 days following the maturity of the obligation to pay any such charges, the lienor may enforce the lien by public or private sale as provided in this section. The lienor may bring an action on the debt in any court of competent jurisdiction at any time following maturity of the obligation. Failure of the lienor to bring such action within a 180-day period following the commencement of storage shall constitute a waiver of any right to collect storage charges which accrue after such period. Provided that when property is placed in storage pursuant to an express contract of storage, the lien shall continue and the lienor may bring an action to collect storage charges and enforce his lien at any time within 120 days following default on the obligation to pay storage charges.

The owner or person with whom the lienor dealt may at any time following the maturity of the obligation bring an action in any court of competent jurisdiction as by law provided. If in any such action the owner or other party requests immediate possession of the property and pays the amount of the lien asserted into the clerk of the court in which such action is pending, the clerk shall issue an order to the lienor to relinquish possession of the property to the owner or other party. The request for immediate possession may be made in the complaint, which shall also set forth the amount of the asserted lien and the portion thereof which is not in dispute, if any. If within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, the lienor does not file a contrary statement of the amount of the lien at the time of the filing of the complaint, the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond, which the plaintiff says in his complaint is not in dispute, upon application of the lienor. The magistrate or judge shall direct appropriate disbursement of the disputed or undisbursed portion of the bond in the judgment of the court. In the event an action by the owner pursuant to this section is heard in district or superior court, the substantially prevailing party in such court may be awarded a reasonable attorney's fee in the discretion of the judge.

(b) Notice and Hearings. –

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the

Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. If the registered or certified mail notice has been returned as undeliverable and the notice of a right to a judicial hearing has been given to the owner of the motor vehicle in accordance with G.S. 20-28.4, no further notice is required. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the registered or certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall be paid immediately to the Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-301.2.

(2) If the property upon which the lien is claimed is other than a motor vehicle required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall issue notice to the person having legal title to the property, if reasonably ascertainable, and to the person with whom the lienor dealt if different by registered or certified mail, return receipt requested. Such notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the lienor by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the lienor that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the lienor that a hearing is desired by the return of such form to the lienor. Failure of the recipient to notify the lienor within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted and the lienor may proceed to enforce the lien by public or private sale as provided in this section. If the lienor is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section only pursuant to the order of a court of competent jurisdiction.

(c) Private Sale. – Sale by private sale may be made in any manner that is commercially reasonable. If the property upon which the lien is claimed is a motor vehicle, the sale may not be made until notice is given to the Commissioner of Motor Vehicles pursuant to G.S. 20-114(c). Not less than 30 days prior to the date of the proposed private sale, the lienor shall cause notice to be mailed, as provided in subsection (f) hereof, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained. Notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by

subsection (f) hereof. The lienor shall not purchase, directly or indirectly, the property at private sale and such a sale to the lienor shall be voidable.

(d) Request for Public Sale. – If an owner, the person with whom the lienor dealt, any secured party, or other person claiming an interest in the property notifies the lienor prior to the date upon or after which the sale by private sale is proposed to be made, that public sale is requested, sale by private sale shall not be made. After request for public sale is received, notice of public sale must be given as if no notice of sale by private sale had been given.

(e) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall notify the Commissioner of Motor Vehicles as provided in G.S. 20-114(c) if the property upon which the lien is claimed is a motor vehicle; and

a1. Shall cause notice to be mailed to the person having legal title to the property if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (f) hereof; and

b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held;

and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale. The notice of sale need not be published if the vehicle has a market value of less than three thousand five hundred dollars ($3,500), as determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

(2) A public sale must be held on a day other than Sunday and between the hours of 10:00 A.M. and 4:00 P.M.:

a. In any county where any part of the contract giving rise to the lien was performed, or

b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale.

(f) Notice of Sale. – The notice of sale shall include:

(1) The name and address of the lienor;

(2) The name of the person having legal title to the property if such person can be reasonably ascertained and the name of the person with whom the lienor dealt;

(3) A description of the property;

(4) The amount due for which the lien is claimed;

(5) The place of the sale;

(6) If a private sale the date upon or after which the sale is proposed to be made, or if a public sale the date and hour when the sale is to be held.

(g) Damages for Noncompliance. – If the lienor fails to comply substantially with any of the provisions of this section, the lienor shall be liable to the person having legal title to the property or any other party injured by such noncompliance in the sum of one hundred dollars ($100.00), together with a reasonable attorney's fee as awarded by the court. Damages provided by this section shall be in addition to actual damages to which any party is otherwise entitled

§ 44A-5. Proceeds of sale.

The proceeds of the sale shall be applied as follows:

(1) Payment of reasonable expenses incurred in connection with the sale. Expenses of sale include but are not limited to reasonable storage and boarding expenses after giving notice of sale.

(2) Payment of the obligation secured by the lien.

(3) Any surplus shall be paid to the person entitled thereto; but when such person cannot be found, the surplus shall be paid to the clerk of superior court of the county in which the sale took place, to be held by the clerk for the person entitled thereto.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 2010

Short Title:	Aircraft Mechanics' Lien.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Judiciary I.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATUTORY LIEN FOR UNPAID LABOR, SKILL, OR MATERIALS ON AN AIRCRAFT AND FOR UNPAID STORAGE OF AN AIRCRAFT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 44A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Aircraft Labor and Storage Liens.

"**§ 44A-50. Definitions.**

As used in this Article, the following definitions apply:

(1) 'Aircraft' means any aircraft, or any engine, part, component, or accessory, whether affixed to or separate from the aircraft.

(2) 'Owner' means an owner, operator, lessor, lessee, or lawful possessor of an aircraft, or any person authorized by any of the foregoing to perform, contract, or arrange for the provision of labor, skill, materials, or storage with respect to any aircraft.

(3) 'Person' means any individual, corporation, association, partnership, whether limited or general, limited liability company, or other entity.

"**§ 44A-55. Persons entitled to a lien on an aircraft.**

Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a lien on the aircraft beginning on the date the expenditure of labor, skill, or materials or the storage commenced, for the contract price for the expenditure of labor, skill, or materials or for the storage, or, in the absence of a contract price, for the reasonable worth of the expenditure of labor, skill, or materials, or of the storage. The lien under this section survives even if the possession of the aircraft is surrendered by the lien claimant.

"**§ 44A-60. Notice of lien on an aircraft.**

The lien under G.S. 44A-55 ceases at the expiration of 90 days after the date the lien claimant voluntarily surrenders possession of the aircraft, unless the lien claimant, prior to the expiration of the 90-day period, files a notice of lien in the office of the register of deeds of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft, whichever applies. The notice of lien shall state the name of the claimant, the name of the registered owner of the aircraft if known, and if not known, the name of the person with whom the lien claimant entered into a contract, a description of the aircraft sufficient for identification, the amount for which the lien is claimed, and the date upon which the expenditure of labor, skill, materials, or storage was commenced and completed, or, if not completed, the date through which the claimed amount is calculated. The notice of lien shall be sworn to, or affirmed, and subscribed by the claimant, or by someone on the claimant's behalf having personal knowledge of the facts, and shall be in substantially the following form:

'[Claimant] Claimant, v. [Owner] Owner

Notice is hereby given that [Claimant](name) claims a lien upon _____[aircraft](describe the aircraft) for labor, skill, or materials expended on, or for storage furnished for, this aircraft; that the name of the registered owner or reputed owner, if the aircraft is not registered or the registered owner is not known, is [Owner](name), that the labor, skill, or materials were expended, or storage was furnished on the aircraft commencing the ____ day of ___, and the labor, skill, or materials or the storage furnished by the claimant [was completed] [is ongoing] on the ___ day of ___; that 90 days have not elapsed since the aircraft was released by the claimant; that the amount claimant demands for the labor, skill, or materials, or for storage furnished, as of the date hereof is $_____(amount); that no part thereof has been paid except $_____(amount); and that there is now due and remaining unpaid, after deducting all credits and offsets, the sum of $_____(amount), in which amount [Claimant](name) claims a lien upon the aircraft.

(Signed) _____ (Claimant)
Address of Claimant _____

State of North Carolina
County of _____

Sworn to (or affirmed) and subscribed before me this day by [name of principal].
Date: _____ [Official Signature of Notary]
_____ [Notary's printed or typed name], Notary Public
_____ My Commission Expires:[Date]
[Official Seal]'

"**§ 44A-65. Notice of lien filed by the register of deeds.**

Upon presentation of a notice of lien pursuant to this Article, the register of deeds shall file the notice of lien and shall index the notice of lien in a book to be kept by the register of deeds for that purpose and called 'Index of Liens Upon Aircraft'.

"**§ 44A-70. Priority of a lien on an aircraft.**

The lien under this Article shall have priority over perfected and unperfected security interests.

"**§ 44A-75. Termination of a lien on an aircraft.**

Any lien under this Article shall be terminated upon receipt by the lien claimant of the full amount owed for the expenditure of labor, skill, or materials on the aircraft, or for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lien claimant. Upon receipt of the amount owed, the lien claimant or the claimant's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lien claimant, and shall, within 20 days following a request in writing by the aircraft owner, file with the register of deeds a notice of satisfaction, if a notice of lien has been filed by the lien claimant. A notice of satisfaction shall state that the amount owed for the lien claimant's expenditure of labor, skill, or materials on the aircraft, or for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction shall be sworn to or affirmed, and subscribed by the claimant or by someone on the claimant's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction, the register of deeds shall make an entry of acknowledgment of satisfaction in the 'Index of Liens upon Aircraft'. The owner of the aircraft may also file with the register of deeds any written document that shows or tends to show the non-existence, satisfaction, or termination of the lien, which written document shall also be indexed by the register of deeds in the 'Index of Lien upon Aircraft.'

"**§ 44A-80. Fees.**

(a) The register of deeds may charge for filing any document under this section a fee of twelve dollars ($12.00) for the first four pages, plus one dollar ($1.00) for each additional page.

(b) The register of deeds may charge a fee for furnishing a certified copy of any document filed with the register of deeds under this section. The amount of the fee shall be the same as the fee received for furnishing certified copies of any other instruments recorded by the register of deeds.

"**§ 44A-85. Public sale of an aircraft to enforce a claim of lien.**

(a) When a lien claimant under this Article has possession of the aircraft continuously for 20 days after the charges accrue and remain unpaid, the lien claimant may sell the aircraft at public sale and apply the proceeds toward the payment of the charges. Not less than 20 days prior to sale by public sale the lien claimant shall do all of the following:

(1) Cause notice to be mailed to the person having legal title to the aircraft if reasonably ascertainable, to the person with whom the lien claimant dealt, if different, and to each secured party or other person claiming an interest in the aircraft who is actually known to the lien claimant or can be reasonably ascertained.

(2) Advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held.

(3) Publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale.

(b) A public sale shall be held on a day other than Sunday and between the hours of 10:00 A.M. and 4:00 P.M. in the county where the lien claimant expended labor, skills, or materials on the aircraft, or where the lien claimant stored the aircraft.

(c) The notice of sale shall include all of the following information:

(1) The name and address of the lien claimant.

(2) The name of the person having legal title to the property if such persons can be reasonably ascertained and the name of the person with whom the lien claimant dealt.

(3) A description of the aircraft.

(4) The amount due for which the lien is claimed.

(5) The place of the sale.

(6) The date and hour when the sale is to be held.

(d) The proceeds from any sale of an aircraft pursuant to this section shall be paid to the lien claimant up to the amount owed for the lien. The balance of the proceeds shall be paid to the person entitled to receive them. If the person legally entitled to receive the balance is not known or has removed from the county, the holder of the balance of the sales proceeds shall pay the balance to the Department of Revenue. If the person legally entitled to receive the balance at any time within two years from the date of payment to the Department of Revenue establishes his or her right to the money to the satisfaction of the Secretary of the Department of Administration, it shall be paid to that person. After two years from the date of payment to the Department of Revenue, all unclaimed monies shall be deposited in the State Public School Fund."

SECTION 2. This act becomes effective October 1, 2006, and applies to any lien that occurs on or after that date and also applies to any lien that occurred before that date if the aircraft was in the possession of a lien claimant on or after that date as well as any lien that occurred before that date if the aircraft was released from possession by a lien claimant no more than 90 days prior to that date.

Final

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 1204
PROPOSED COMMITTEE SUBSTITUTE S1204-PCS75542-LH-32

Short Title: Jessica's Law/Strengthen Sex Offender Laws. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO APPROPRIATE FUNDS TO IMPLEMENT AN ACTIVE AND PASSIVE ELECTRONIC MONITORING SYSTEM TO ASSIST WITH THE SUPERVISION OF CERTAIN SEX OFFENDERS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10 year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public

record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2. G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3. G.S. 14-208.7 reads as rewritten:

"**§ 14-208.7. Registration.**

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of at least 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of at least 10 years following each conviction for a reportable offense.

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph;

(4) The person's fingerprints;

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of

the educational institution at which the person is a student or expects to enroll as a student; and

(6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry.

(d) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 4. G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register ~~moves~~ intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least 10 days before the date the person intends to leave this State to establish residence in another state or jurisdiction.~~provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the~~ The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

(1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.

(2) The sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The

sheriff shall also immediately forward the ~~change of address~~ information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within 10 days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person ~~shall~~ shall, within 10 days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new ~~status not later than the tenth day after the change to the sheriff of the county with whom the person registered.~~status. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person ~~shall~~ shall, within 10 days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division."

SECTION 5. G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

The information in the county registry shall be verified ~~annually~~ semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex

offender, then the sheriff shall take a photograph of the offender to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address."

SECTION 6. G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(7) Fails to report in person to the sheriff's office as required by G.S. 14-208.7, 14-208.9, and 14-208.9A.

(8) Reports his or her intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff in the manner required by G.S. 14-208.9."

SECTION 7. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.**

(a) It shall be unlawful and a Class H felony for any person who has reason to believe that an offender is in violation of the requirements of this Article, and who has the intent to assist the offender in eluding arrest, to do any of the following:

(1) Withhold information from, or fail to notify, a law enforcement agency about the offender's noncompliance with the requirements of this Article, and, if known, the whereabouts of the offender.

(2) Harbor, attempt to harbor, or assist another person in harboring or attempting to harbor, the offender.

(3) Conceal or attempt to conceal, or assist another person in concealing or attempting to conceal, the offender.

(4) Provide information to a law enforcement agency regarding the offender that the person knows to be false information.

(b) This section does not apply if the offender is incarcerated in or is in the custody of a local, State, private, or federal correctional facility."

SECTION 8. G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. ~~Termination~~ Request for termination of registration requirement.**

(a) A person required to register under this Part who has served his or her sentence may petition the superior court in the district where the person resides to terminate the registration requirement~~The requirement that a person register under this Part automatically terminates~~ 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article. The court may grant or deny the relief if the petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence, the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the clerk of court shall forward a certified copy of the order to the Division to have the person's name removed from the registry.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is ~~terminated.~~terminated by the court under subsection (a) of this section."

SECTION 9. G.S. 14-208.28 reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

The information provided to the sheriff shall be verified ~~annually~~ semiannually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration ~~date,~~date and six months after that date, the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form."

SECTION 10. Part 3 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.24A. Sexual predator prohibited from working or volunteering for child-involved activities; organizations.**

(a) It shall be unlawful for any person required to register under this Part because he or she is classified as a sexually violent predator, is a recidivist, or is a person convicted of an aggravated offense, to work for any person, with or without compensation, at any business, school, day care center, park, playground, or other place where the employer conducts any activity where a minor is present and the person's responsibilities include instruction, supervision, or care of a minor or minors.

(b) A violation of this section is a Class F felony."

SECTION 11. Article 33 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-259A. Altering, tampering, or damaging electronic monitoring equipment used to monitor persons placed on house arrest, probation, post-release supervision or other types of release.**

(a) It is unlawful to alter, tamper with, damage, or destroy any electronic monitoring equipment used to monitor a person who has been placed on probation, house arrest, post-release supervision, parole, study release, or work release.

(b) A violation of this section is a Class F felony."

SECTION 12. G.S. 15A-1341 is amended by adding a new subsection to read:

"(d) Search of Sex Offender Registration Information Required When Placing a Defendant on Probation. – When the court places a defendant on probation, the probation officer assigned to the defendant shall conduct a search of the defendant's name or other identifying information against the registration information regarding sex offenders compiled by the Division of Criminal Statistics of the Department of Justice in accordance with Article 27A of Chapter 14 of the General Statutes. The probation officer may conduct the search using the Internet site maintained by the Division of Criminal Statistics."

SECTION 13.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 5. Sex Offender Monitoring.

"**§ 14-208.33. Establishment of program; creation of guidelines; duties.**

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor two categories of offenders as follows:

(1) Any offender who is convicted of a reportable conviction and who is required to register under Part 3 of Article 27A of this Chapter because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.

(2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction (ii) is required to register under Part 2 of Article 27A of this Chapter, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) requires the highest possible level of supervision and monitoring, based on the sex offender risk assessment program developed by the Division of Community Corrections, Department of Correction. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(b) In developing the guidelines for the program, the Department shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Department determines that an active program will not work as provided by this section, then the Department shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

(1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Department may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part.

"**§ 14-208.34. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

(a) Any person described by G.S. 14-208.33(a)(1) shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the registration period imposed under G.S. 14-208.33 which is

the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.36.

(b) Any person described by G.S. 14-208.33(a)(2) who is ordered by the court to enroll in a satellite-based monitoring program shall do so with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the period of time ordered by the court.

"**§ 14-208.35. Lifetime registration offenders required to submit to satellite-based monitoring for life and to continue on unsupervised probation upon completion of sentence.**

Notwithstanding any other provision of law, when the court sentences an offender who is in the category described by G.S. 14-208.33(a)(1) for a reportable conviction, and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender, upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, continue to be enrolled in the satellite-based monitoring program for the offender's life and be placed on unsupervised probation unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.36.

"**§ 14-208.36. Request for termination of satellite-based monitoring requirement.**

(a) An offender described by G.S. 14-208.33(a)(1) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence.

(b) Upon receipt of the request for termination, the Commission shall review documentation contained in the offender's file and the statewide registry to determine whether the person has complied with the provisions of this Article. In addition, the Commission shall conduct fingerprint-based state and federal criminal history record checks to determine whether the person has been convicted of any additional reportable convictions.

(c) If it is determined that the person has not received any additional reportable convictions during the period of satellite-based monitoring and the person has substantially complied with the provisions of this Article, the Commission may terminate the monitoring requirement if the Commission finds that the person is not likely to pose a threat to the safety of others.

(d) If it is determined that the person has received any additional reportable convictions during the period of satellite-based monitoring or has not substantially complied with the provisions of this Article, the Commission shall not order the termination of the monitoring requirement.

(e) The Commission shall not consider any request to terminate a monitoring requirement except as provided by this section. The Commission has no authority to consider or terminate a monitoring requirement for an offender described in G.S. 14-208.33(a)(2).

"**§ 14-208.37. Failure to enroll; tampering with device.**

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class E felony.

(b) Any person who intentionally tampers with, removes, or vandalizes a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class C felony.

"**§ 14-208.38. Fees.**

(a) There shall be a onetime fee of ninety dollars ($90.00) assessed to each person required to enroll pursuant to this Part. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on satellite-based monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (c) of this section to determine the payment schedule. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system.

(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department.

(c) If a person placed on supervised probation, parole, or post-release supervision is required as a condition of that probation, parole, or post-release supervision to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule."

SECTION 13.(b) G.S. 15A-1343(b2) reads as rewritten:

"(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful

or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

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

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(1).

(8) Submit to electronic monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.33(a)(2), and the Department of Correction, based on the Department's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation."

SECTION 13.(c) G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.33(a)(1)."

SECTION 13.(d) G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

"(5) Submit to electronic monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(2)."

SECTION 13.(e) G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is in the category described by G.S. 14-208.33(a)(1) violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation."

SECTION 13.(f) G.S. 15A-1368.2 is amended by adding a new subsection to read:

"(c1) Notwithstanding subsection (c) of this section, a person required to submit to satellite-based monitoring pursuant to G.S. 15A-1368.4(b1)(6) shall continue to participate in satellite-based monitoring beyond the period of post-release supervision until the Commission releases the person from that requirement pursuant to G.S. 15A-1368.4A."

SECTION 13.(g) G.S. 15A-1368.4(b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – In addition to the required condition set forth in subsection (b) of this section, ~~for~~ a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, ~~controlling conditions, violations of which may result in revocation of post-release supervision, are:~~must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(1).

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(2)."

SECTION 13.(h) G.S. 15A-1374 is amended by adding a new subsection to read:

"(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is in a category described by G.S. 14-208.33(a)(1), the Commission must require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes. If a parolee is in a category described by G.S. 14-208.33(a)(2), the Commission may require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 13.(i) G.S. 143B-266 is amended by adding a new subsection to read:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of

satellite-based monitoring as provided by G.S. 14-208.35. The Commission may grant or deny those requests in compliance with G.S. 14-208.35."

SECTION 13.(j) The Department of Correction shall have the program enacted by subsection (a) of this section established by January 1, 2007.

SECTION 13.(k) This section is effective when it becomes law and applies to offenses committed on or after that date. This section also applies to any person sentenced to intermediate punishment on or after that date and to any person released from prison by parole or post-release supervision on or after that date. This section also applies to any person who completes his or her sentence on or after the effective date of this section who is not on post-release supervision or parole. However, the requirement to enroll in a satellite-based program is not mandatory until January 1, 2007, when the program is established.

SECTION 14. The Department of Correction shall issue a Request for Proposal (RFP) for electronic monitoring equipment and monitoring services for the Division of Community Corrections' electronic house arrest and electronic monitoring programs. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services. The Department shall design the RFP to use the most recent, cost-effective technology available; the Department shall not restrict vendors to the specifications of the equipment currently utilized by the Department.

The Department of Correction shall issue a RFP for passive and active Global Positioning Systems for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services.

No less than 30 days prior to issuing these RFPs, the Department shall provide the Fiscal Research Division with copies of the draft RFPs. The RFPs shall be issued by August 1, 2006, for contract terms to begin January 1, 2007.

The Department of Correction shall report by October 1, 2007, to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the responses to the RFPs.

SECTION 15. No later than January 1, 2007, the Department of Correction shall develop a graduated risk assessment program that identifies, assesses, and closely monitors a high-risk sex offender who, while not classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, may still require extraordinary supervision and may be placed on probation, parole, or post-release supervision only on the conditions provided in G.S. 15A-1343(b2) or G.S. 15A-1368.4(b1).

SECTION 16. There is appropriated from the General Fund to the Department of Correction the sum of one million seven hundred seven thousand two hundred eighteen dollars ($1,707,218) for the 2006-2007 fiscal year to implement the active and passive electronic monitoring systems required by this act.

SECTION 17. Section 13 of this act is effective as provided therein. Sections 12, 14, and 15 are effective when this act becomes law. Section 16 of this act becomes effective July 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-15-06

S. B. No. 1204 Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1204-CSLN-32[v.5]

Rep.)
) BRUNSTETTER
Sen)

1 moves to amend the bill on page 6, line 8

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORD "COURT"

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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/15/06

S. B. No. S1204 Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1204-CSLN-32 [v.5]

Rep.)
Sen.) SOLES

1 moves to amend the bill on page 6, line 25
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "petitioner" and
4 substituting the words "clerk of court".
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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 1204:
Jessica's Law/Strengthen Sex Offender Laws

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget	**Date:**	June 14, 2006
Introduced by:	Sen. Allran	**Summary by:**	Hal Pell
Version:	PCS S1204-CSLH-32		Committee Co-Counsel

SUMMARY: This act amends the sex offender registration statutes, imposes electronic monitoring requirements, and appropriates funds for the purposes of the act.

CURRENT LAW: There are two established sex offender registration programs: the Sex Offender and Public Protection Registration Program, with a registration period of 10 years, and the Sexually Violent Predator Registration Program, with a lifetime registration requirement. [See Attachment for definition of terms]

BILL ANALYSIS:

Section 1 -- Requires persons subject to registration to register in person. Current law does not specify that the person must appear at the Sheriff's office to register.

Section 2 -- Requires juveniles subject to registration to also register in person.

Section 3 -- Changes the registration period from a fixed 10 year period, to a minimum duration of 10 years. Additional amendments provide for a petition procedure to terminate the registration period. (See Section 8, below)

Section 4 – Current law provides that a person moving out of state must notify the Sheriff no later than 10 days after moving to the new state. The act amends the law to require that the person notify the Sheriff in person of the intent to move at least 10 days before the departure date. The person is required to provide, in writing, the following: address, municipality, county and state of intended reference. In addition, a current photograph must be provided. If the person does not leave the State as provided in the notification, then the person must so notify the Sheriff within 10 days after the previously indicated move date. The section also provides similar amendments to the notification procedures for change of academic and employment status.

Section 5 – Adds additional requirements to the registration provisions:

- Verification biannually instead of annually
- Verification in person within 10 days of receipt of the form.
- Inclusion of a photograph with the verification form.

Section 6 – Adds the following to offenses designated as Class F felonies:

- Fails to report in person as required by the act
- Reports intent to reside in another State but remains in the State without notification to the Sheriff.

Section 7 -- Creates a new Class H felony offense for persons who have reason to believe that a person is in noncompliance with the sex offender registration statutes, and with the intent to assist the offender in eluding law enforcement agencies, does any of the following:

- Withholds information about the noncompliance, or the whereabouts of the offender
- Harbors, attempts to harbor, or assists another in these actions
- Conceals, attempts to conceal, or assists another in these actions
- Provides false information to a law enforcement agency, knowing it to be false

Section 8 – Under current law, a 10-year registration terminates automatically if the registrant has not committed any offense subject to registration. The section amends current law to require the registrant to file a petition in the superior court to terminate the registration period. The amendments provide guidelines for the judge in determining whether to grant the petition. The District Attorney is notified at least three weeks prior to a hearing, and may present evidence in opposition. An unsuccessful petitioner must wait one year following a denial to re-petition the court. If the relief is granted, then the person's name is removed from the registry.

Section 9 -- Requires juvenile court counselors to report on behalf of juvenile registrants biannually (currently an annual requirement).

Section 10 – Prohibits persons with a lifetime registration requirement from working (paid or volunteer) at any place where the person would instruct, supervise, or care for minors. A violation of the provision is a Class F felony.

Section 11 – Makes the altering, tampering, or damaging electronic monitoring equipment a Class F felony.

Section 12 – Requires probation officers to conduct a search of the probationer's name against the registration information complied under the sex offender registration act.

Section 13 –

- Requires the Department of Correction (DOC) to use an electronic monitoring system for those lifetime registrants required to submit to such monitoring that does the following:
    - Actively monitors the offender
    - Identifies the offender's location
    - Timely reports or records the offenders presence near of within a crime scene, prohibited area, or departure from specified geographical limitations.

If there is not a system available that complies with the section's requirements, then the Department is authorized to use a passive electronic system that works within the technological or geographical limitations.

- Creates two categories of individuals who are required to submit to electronic monitoring, and requires a court to impose registration as a condition of probation or parole.
    - Sexually violent predators, recidivists, or convicted of an aggravated offense. The term of electronic monitoring is life. The person may petition the Post-Release Supervision and Parole Commission to terminate the monitoring upon completion of the person's sentence, and any period of

probation, parole, or post-release supervision. The person remains on unsupervised probation for the duration of the term.

- Persons who committed an offense involving the physical, mental, or sexual abuse of a minor, and who require the highest level of supervision based on the DOC sex offender risk assessment program. The person is subject to monitoring for the time period ordered by the court.

A person required to enroll who doesn't do so is guilty of a Class E felony. Intentionally tampering with, removing, or vandalizing a device is a Class C felony.

There is a fee of $90 payable upon enrollment. Upon motion and good cause, the court may waive the fee. The fee is to offset the costs of the monitoring, and a payment schedule may be set by a probation officer.

Section 14 -- Requires the DOC to issue a Request for Proposal (RFP) for electronic monitoring and monitoring services. The RFP is for the most recent, and cost-effective technology available. The DOC is required to issue an RFP for passive and active Global Positioning Systems (GPS) for use as an intermediate sanction for sex offenders. The RFP must have separate bids: one for equipment, maintenance, and technical support; and one for the foregoing items plus monitoring services. The contract term would begin on January 1, 2007. The section contains report dates for the draft RFP (to Fiscal Research), and RFP responses (to Appropriation Committees and Subcommittee Chairs).

Section 15 -- Requires the DOC to develop, no later than January 1, 2007, a graduated risk assessment program that identifies persons that may not be lifetime registrants, but may need extraordinary supervision under similar conditions as a lifetime registrant.

Section 16 -- Appropriates the sum of $1,707,218 for the 2006-2007 fiscal year to implement the active and passive electronic monitoring systems required by the act.

Section 17 -- Section 13 of the act is effective as provided therein. Sections 12, 14 and 15 are effective when the act becomes law. Section 16 of this act becomes effective July 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

[SEE ATTACHMENT FOR DEFINITIONS]

ATTACHMENT

G.S. 14-208.6 Definitions.

. . .

(4) **"Reportable conviction"** means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.

(5) **"Sexually violent offense"** means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), 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), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(6) **"Sexually violent predator"** means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

original

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1204

Short Title:	Jessica's Law/Strengthen Sex Offender Laws.	(Public)
Sponsors:	Senators Allran, Atwater, Bingham, Purcell; Albertson, Apodaca, Berger of Rockingham, Blake, Boseman, Brock, Brown, Forrester, Garrou, Garwood, Goodall, Hartsell, Hunt, Jacumin, Jenkins, Lucas, Pittenger, Presnell, Shaw, Smith, Snow, Stevens, Swindell, Tillman, and Weinstein.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO APPROPRIATE FUNDS TO IMPLEMENT AN ACTIVE AND PASSIVE ELECTRONIC MONITORING SYSTEM TO ASSIST WITH THE SUPERVISION OF CERTAIN SEX OFFENDERS PLACED ON PROBATION, PAROLE, OR POST-RELEASE SUPERVISION, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10 year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2. G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3. G.S. 14-208.7 reads as rewritten:

"**§ 14-208.7. Registration.**

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within ~~10 days~~ 48 hours of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within ~~10 days~~ 48 hours of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of at least 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of at least 10 years following each conviction for a reportable offense.

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph;

(4) The person's fingerprints;

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student; and

(6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry.

(d) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 4. G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than ~~the tenth day~~48 hours after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register ~~moves~~ intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least 48 hours before the date the person intends to leave this State to establish residence in another state or jurisdiction.~~provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the~~ The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence. The person shall also include a current photograph with the information. The sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence.

The sheriff shall also immediately forward the ~~change of address~~ information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within 48 hours after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person ~~shall~~ shall, within 48 hours, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new ~~status not later than the tenth day after the change to the sheriff of the county with whom the person registered.~~status. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person ~~shall~~ shall, within 48 hours, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than ~~the tenth day~~ 48 hours after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division."

SECTION 5. G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

The information in the county registry shall be verified ~~annually~~ semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall return the verification form in person to the sheriff within ~~10 days~~ 48 hours after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) The person shall include a current photograph of himself or herself with the verification form. The photograph must be easy to view and

must provide a true and accurate likeness of the offender. If, in the sheriff's discretion, the photograph does not satisfy that criteria, then the sheriff may take a photograph of the offender to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within ~~10 days~~48 hours after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address."

SECTION 6. G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(7) Fails to report in person to the sheriff's office as required by G.S. 14-208.7, 14-208.9, and 14-208.9A.

(8) Reports his or her intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff in the manner required by G.S. 14-208.9."

SECTION 7. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.**

(a) Any person who has reason to believe that an offender required to register under this Article is not complying, or has not complied, with the requirements of this Article and who, with the intent to assist the offender in eluding a law enforcement agency that is seeking to find the offender to question the offender about, or to arrest the offender for, his or her noncompliance with the requirements of this Article and who does any of the following is guilty of a Class H felony:

(1) Withholds information from, or does not notify, the law enforcement agency about the offender's noncompliance with the requirements of this Article, and, if known, the whereabouts of the offender.

(2) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the offender.

(3) Conceals or attempts to conceal, or assist another person in concealing or attempting to conceal, the offender.

(4) Provides information to the law enforcement agency regarding the offender that the person knows to be false information.

(b) This section does not apply if the offender is incarcerated in or is in the custody of a local, State, private, or federal correctional facility."

SECTION 8. G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. ~~Termination~~ Request for termination of registration requirement.**

(a) A person required to register under this Part who has served his or her sentence may petition the superior court in the district court where the person resides to terminate the registration requirement~~The requirement that a person register under this Part automatically terminates~~ 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article. The court may grant or deny the relief if the petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence, the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the petitioner shall forward a certified copy of the order to the Division to have the person's name removed from the registry.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated."

SECTION 9. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.25A. Community and public notification.**

(a) Law enforcement agencies shall inform members of the community and the public of the presence of any person required to register under this Part as a recidivist, as sexual predator, or because the person has committed an aggravated offense. Upon notification of the presence of a registrant under this Part, the sheriff of the county where the registrant establishes or maintains a permanent or temporary residence shall

notify members of the community and the public of the presence of the registrant in a manner deemed appropriate by the sheriff. Within 48 hours after receiving notification of the presence of a registrant under this Part, the sheriff of the county where the registrant temporarily or permanently resides shall notify each licensed day care center, elementary school, middle school, and high school within a one-mile radius of the registrant's temporary or permanent residence of the registrant's presence. The information to be provided under this section shall not include the name of any victim of the registrant, but shall include all of the following:

(1) The name of the registrant.

(2) A description of the registrant, including a photograph.

(3) The registrant's current address, including the name of the county or municipality, if known.

(4) The circumstances of the registrant's offense.

(5) Whether the victim of the offense was, at the time of the offense, a minor or an adult.

(b) The sheriff may coordinate the community and public notification efforts with the Division. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the Division.

(c) The Division shall notify the public of all registrants under this Part through the Internet. The Internet notice shall include the information required by subsection (a) of this section.

(d) The Division shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and public of the presence of persons required to register under this Part."

SECTION 10. G.S. 14-208.27 reads as rewritten:

"**§ 14-208.27. Change of address.**

If a juvenile who is adjudicated delinquent and required to register changes address, the juvenile court counselor for the juvenile shall provide written notice of the new address not later than ~~the tenth day~~ 48 hours after the change to the sheriff of the county with whom the juvenile had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the juvenile moves to another county in this State, the Division shall inform the sheriff of the new county of the juvenile's new residence."

SECTION 11. G.S. 14-208.28 reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

The information provided to the sheriff shall be verified ~~annually~~ semiannually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration ~~date,~~date and six months after that date the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within ~~10 days~~48 hours after the receipt of the form.

(3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form."

SECTION 12. Part 3 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.24A. Sexual predator prohibited from working or volunteering at any place where children regularly congregate.**

(a) Any person required to register under this Part because he or she is classified as a sexually violent predator, is a recidivist as defined by G.S. 14-208.6, or is a person convicted of an aggravated offense as defined by G.S. 14-208.6 shall not work, for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate.

(b) A violation of this section is a Class F felony."

SECTION 13. Article 33 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-259A. Altering, tampering, or damaging electronic monitoring equipment used to monitor persons placed on house arrest, probation, post-release supervision or other types of release.**

(a) It is unlawful to alter, tamper with, damage, or destroy any electronic monitoring equipment used to monitor a person who has been placed on probation, house arrest, post-release supervision, parole, study release, or work release.

(b) A violation of this section is a Class F felony."

SECTION 14. G.S. 15A-1341 is amended by adding a new subsection to read:

"(d) Search of Sex Offender Registration Information Required When Placing a Defendant on Probation. – When the court places a defendant on probation, the probation officer assigned to the defendant shall conduct a search of the defendant's name or other identifying information against the registration information regarding sex offenders compiled by the Division of Criminal Statistics of the Department of Justice in accordance with Article 27A of Chapter 14 of the General Statutes. The probation officer may conduct the search using the Internet site maintained by the Division of Criminal Statistics."

SECTION 15. G.S. 15A-1343(b2) reads as rewritten:

"(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

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

(7) If the defendant is required to register under Part 3 of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense, as those terms are defined in G.S.14-208.6, then the defendant must submit to electronic monitoring as provided in G.S. 15A-1380.6.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation."

SECTION 16. G.S. 15A-1343(c2) reads as rewritten:

"(c2) Electronic Monitoring Device Fee. – Any person placed on house arrest with electronic monitoring under subsection (b1) of this section or who is required to register as a sex offender under Part 3 of Chapter 14 of the General Statutes and therefore has electronic monitoring imposed as a condition of probation under subsection (b2) of this section and G.S. 15A-1380.6 shall pay a fee of ninety dollars ($90.00) for the electronic monitoring device. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic ~~monitoring.~~ monitoring or upon motion of the person who is required to register as a sex offender under Part 3 of Chapter 14 of the General Statutes and has electronic monitoring imposed as a condition of probation under subsection (b2) of this section and G.S. 15A-1380.6. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fee must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

SECTION 17. G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Electronic Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who violates

probation is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense, as those terms are defined in G.S.14-208.6, and if the court extends the probation as a result of the violation, then the court shall order electronic monitoring as a condition of the extended probation. The electronic monitoring system used shall comply with the provisions of G.S. 15A-1380.6."

SECTION 18. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(b2) Mandatory Electronic Monitoring for Certain Other Sex Offenders. – In addition to the other required conditions set forth in this section, the Commission shall also impose electronic monitoring as a condition for a supervisee who is required to register under Part 3 of Chapter 14 of the General Statutes because the person is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6. The electronic monitoring system used shall comply with the provisions of G.S. 15A-1380.6."

SECTION 19. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 85C.

"Electronic Monitoring Devices

"**§ 15A-1380.6. Electronic monitoring devices.**

If electronic monitoring is imposed as a condition of probation, parole, or post-release supervision on an offender who is required to register under Part 3 of Chapter 14 of the General Statutes because the offender is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, the Department of Correction shall use an electronic monitoring system that actively monitors the offender, identifies the offender's location, and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations. If an electronic monitoring system that actively monitors the offender will not work as provided by this section, then the Department of Correction shall use a passive electronic system that works within the technological or geographical limitations."

SECTION 20. The Department of Correction shall issue a Request for Proposal (RFP) for electronic monitoring equipment and monitoring services for the Division of Community Corrections' electronic house arrest and electronic monitoring programs. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services. The Department shall design the RFP to use the most recent, cost-effective technology available; the Department shall not restrict vendors to the specifications of the equipment currently utilized by the Department.

The Department of Correction shall issue a RFP for passive and active Global Positioning Systems for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services.

No less than 30 days prior to issuing these RFPs, the Department shall provide the Fiscal Research Division with copies of the draft RFPs. The RFPs shall be issued by August 1, 2006, for contract terms to begin January 1, 2007.

The Department of Correction shall report by October 1, 2007, to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the responses to the RFPs.

SECTION 21. No later than January 1, 2007, the Department of Correction shall develop a graduated risk assessment program that identifies, assesses, and closely monitors a high-risk sex offender who, while not classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, may still require extraordinary supervision and may be placed on probation, parole, or post-release supervision only on the conditions provided in G.S. 15A-1343(b2) or G.S. 15A-1368.4(b1).

SECTION 22. There is appropriated from the General Fund to the Department of Correction the sum of one million three hundred seven thousand two hundred eighteen dollars ($1,307, 218) for the 2006-2007 fiscal year to implement the active and passive electronic monitoring systems required by this act.

SECTION 23. Section 22 of this act becomes effective July 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6/15/06

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VB Powell	AOC
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Ashby Ray	NC AGO
Gary McLaud	NCAGO
Chris Sinha	NC AGO
Jo Anne Lamm	DHHS/DSS
DAVID CARTNER	NC BAR ASSOC.
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Cameron Contizano	Daily Bulletin

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Jill Stotzberger	ACLU-NC
Meredith Bushey	NC Atty General's Office
Garrett Artz	NC AGO
Selena Berrier	Child Fatality Task Force
Laura Edwards	NC Conference of District Attorneys
Peg Dorer	NC Conference of DAs
Anne Winner	
Matt Osborne	AOC
Will Pully	NCDOJ
Cally Uggins	Gov.'s office

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Bryce Ball	Fiscal Research
Jami Fitzgerald	NCFPC

VISITOR REGISTRATION SHEET

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5-15-03 — Date

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Reginald Johnson	CRL
Lorrin Freeman	DOJ
Nancy Garriss	Rep. Moore
Joe McClees	McClees Consulting, Inc
Anthony Roulette	NRLA-ILA
Stacy Flannery	NCHCFA
Mary Thomas	REBIC
R.A. Hoe	Charlotte-Meck Police Dept
C.N. Brown	Charlotte Mecklenburg Police

VISITOR REGISTRATION SHEET

J-1 — 5-15-03 AM

Name of Committee — Date

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Lorin Mueller	NC Coalition of Police
Capt. D R Haggist	Charlotte-Meck Police
Major Tim Stewart	Charlotte-Mecklenburg Police
Boyd Cauble	City of Charlotte
Jane Ramsey	NCIMS
Virginia Hebert	Sen. Berger
Leanne Marin	NCSBA
Hal Miller	NCACCT
Marc Finlayson	Finlayson Consulting, LLC
Richard C. Haith	AARP

Final

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1965
Corrected Copy 5/16/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1965-PCS80665-RU-89

Short Title: Eminent Domain Restrictions. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE STATUTORY PURPOSES FOR WHICH EMINENT DOMAIN MAY BE USED BY PRIVATE CONDEMNORS, LOCAL PUBLIC CONDEMNORS, AND OTHER PUBLIC CONDEMNORS, AND FOR CERTAIN REVENUE BOND PROJECTS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-1 reads as rewritten:

"**§ 40A-1. Exclusive provisions.**

(a) Notwithstanding the provisions of any local act, it is the intent of the General Assembly that, effective July 1, 2006, the uses set out in G.S. 40A-3 are the exclusive uses for which the authority to exercise the power of eminent domain is granted to private condemnors, local public condemnors, and other public condemnors. Effective July 1, 2006, a local act granting the authority to exercise the power of eminent domain to a private condemnor, local public condemnor, or other public condemnor for a use or purpose other than those granted to it in G.S. 40A-3(a), (b), (b1), or (c) is not effective for that use or purpose. Provided that, any eminent domain action commenced before July 1, 2006, for a use or purpose granted in a local act, may be lawfully completed pursuant to the provisions of that local act. The provisions of this subsection shall not repeal any provision of a local act limiting the purposes for which the authority to exercise the power of eminent domain may be used.

(b) It is the intent of the General Assembly that the procedures provided by this Chapter shall be the exclusive condemnation procedures to be used in this State by all private condemnors and all local public condemnors. All other provisions in laws, charters, or local acts authorizing the use of other procedures by municipal or county governments or agencies or political subdivisions thereof, or by corporations, associations or other persons are hereby repealed effective January 1, 1982. Provided,

that any condemnation proceeding initiated prior to January 1, 1982, may be lawfully completed pursuant to the provisions previously existing.

(c) This ~~chapter~~ Chapter shall not repeal any provision of a local act ~~enlarging or~~ limiting the purposes for which property may be condemned. Notwithstanding the language of G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act creating any substantive or procedural requirement or limitation on the authority of a local public condemnor to exercise the power of eminent domain outside of its boundaries."

SECTION 2. G.S. 40A-3 reads as rewritten:

"**§ 40A-3. By whom right may be exercised.**

(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:
   a. Not be less than 50 feet nor more than 100 feet in width; and
   b. Comply with the provisions of G.S. 62-190(b).

   The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.

(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding.

(5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors – Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(c) Other Public Condemnors. – For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.

(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.

(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.

(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.

(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.

(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.
(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.
(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article.
(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.
(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.
(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.
(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.
(13) A regional public transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter."

SECTION 3. G.S. 159-83(a)(1) reads as rewritten:

"(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to July 1, 2006."

SECTION 4. This act becomes effective July 1, 2006.

Princ

Wanda Joyner (Sen. Clodfelter)

From: Joyce Hodge (Senate LA Director)
Sent: Friday, June 16, 2006 2:58 PM
Subject: Senate J-1 Meeting 06-20-2006

Principa
Reading

SENATE
NOTICE OF COMMITTEE
AND
BILL SPONSOR NO

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

DAY	DATE	TIME
Tuesday	June 20, 2006	10:00 Al

The following will be considered:

BILL NO.	SHORT TITLE	SPC
HB 1048	Governor's DWI Task Force Recommendations.	Rep
HB 1965	Eminent Domain Restrictions.	Rep Rep

Senator D

6/19/2006

Judiciary I Committee

June 20, 2006

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 a.m. with sixteen members present. He introduced Pages, Marie Taylor, from Fletcher, NC, Julia Taylor, from Chapel Hill, NC, Shamika Hodge, from Knightdale, NC, John Cuffney, from Raleigh, NC and Samantha Brody, from Greenville, NC

HB-1965 (Eminent Domain Restrictions) Committee Substitute was introduced by Senator Clodfelter. Senator Jeanne Lucas moved for adoption of the Committee Substitute. All members voted yes. Motion carried. In the absence of bill sponsors Representatives Bruce Goforth and Wilma Sherrill, Senator Clodfelter asked Senator John Snow to explain changes to the bill. Senator Snow explained that the bill would restrict the purposes for which eminent domain may be used by repealing local acts that broaden the power beyond what is set out by statute, and by limiting the use of eminent domain for certain revenue bond projects, as recommended by the House Select Committee on Eminent Domain Powers. (See attached Bill Summary for further information). He asked for support from the Committee. Senator Janet Cowell had a question on page 6, line 34. Staff attorney, Walker Reagan answered the question. Charlie Albertson had a question. Representative Goforth, who had joined the audience, answered the question, and said there was no opposition to the bill. Senator Albertson moved for a Favorable Report. All members voted yes. Motion carried.

HB-1048 (Governor's DWI Task Force Recommendations) Committee Substitute. was introduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter asked staff attorney, Hal Pell, to explain changes to the bill. Mr. Pell explained that Page 9, Line 13 and Page 33, Line 24 was a new Section. Members voted yes to adopt the changes. Senator Clodfelter asked for Amendments to the bill. Senator Martin Nesbitt had offered an Amendment at the June 13, Committee meeting, and it was displaced at that time. Senator's Pete Brunstetter, Phillip Berger, and R. C. Soles, had questions. Ms. Susan Sitze, staff attorney, answered the questions. Senator Clodfelter stated that since there were so many questions, he would appoint a sub-committee consisting of Senator's R.C. Soles as Chair, Tony Rand, Peter Brunstetter, Phillip Berger, Martin Nesbitt, and staff attorneys, to work on

the Amendments and bring them back to the Committee at the next meeting. Ms. Kerry Sutton, NC Trial Lawyers Assoc. spoke on the bill, and answered questions. There was some discussion on Keg size. Mr. Hall Pell, staff attorney, stated that there has to be a number on the keg to make it law in an Amendment. Senator's Richard Stevens, Tony Rand and Charlie Albertson had questions. The questions were answered by Mr. Pell. Senator Albertson offered Amendment #1 to the bill on Page 1, Line 16, and asked for adoption. All members voted yes. Amendment adopted. Senator Albertson offered Amendment #2 to the bill on Page 2, Line 18, and asked for adoption. All members voted yes. Amendment adopted. Mr. Dewey Hudson, District Attorney for Hampton County, Ms. Peg Dorr, Executive Director, Conference of District Attorney's spoke on the bill and answered questions. Staff attorney, Susan Sitze answered questions. Senator Martin Nesbitt offered a Perfection Amendment #3, on Page 2, Line 21, to Senator Albertson's Amendment. No debate, All members voted yes. Motion carried. Both Perfection Amendments were adopted. Senator David Hoyle offered an Amendment to the bill. Senator Clodfelter asked the members to work on their Amendments and bring them back to the next meeting.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, June 22, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

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

H.B. **1965** Eminent Domain Restrictions.

Draft Number:	PCS 80665
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

HOUSE BILL 1965:
Eminent Domain Restrictions

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 20, 2006
Introduced by:	Reps. Goforth, Sherrill	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition H1965-CSRU-89		Committee Co-Counsel

SUMMARY: ***The Senate Proposed Committee Substitute for House Bill 1965 would restrict the purposes for which eminent domain may be used by repealing local acts that broaden the power beyond what is set out by statute, and by limiting the use of eminent domain for certain revenue bond projects, as recommended by the House Select Committee on Eminent Domain Powers.***

CURRENT LAW: North Carolina law authorizes the use of eminent domain to acquire by condemnation property for public use or benefit under certain circumstances. Chapter 40A of the General Statutes provides condemnation procedures for private condemnors, local public condemnors, and other public condemnors. G.S. 40A-3 provides specific listed purposes for which the power may be used by those condemnors. However, there have been several local acts passed over the years that expand the purposes for which eminent domain may be used in certain localities, including for economic development purposes. In addition, G.S. 159-83 authorizes the State and municipalities to exercise the power of eminent domain for revenue bond projects, which are defined to include economic development projects.

BILL ANALYSIS: The Senate Proposed Committee Substitute for House Bill 1965 would restrict the purposes for which eminent domain may be used in the following ways:

Repealing local acts. Section 1 of the bill would make clear the intent of the General Assembly that the purposes listed in G.S. 40A-3 are the only purposes for which the eminent domain power may be used by private condemnors, local public condemnors, and other public condemnors. Any local acts that have broadened the power in the past would be repealed. The bill would permit any condemnation action commenced prior to July 1, 2006 to be completed under existing law:

Revenue bond projects. Section 3 of the bill would exclude economic development projects from the list of revenue bond projects for which eminent domain powers may be used by the State and municipalities. The bill would not apply this prohibition to projects the revenue bonds for which have been approved by the Local Government Commission prior to July 1, 2006.

Section 2 of the bill is a technical change.

EFFECTIVE DATE: The bill would become effective July 1, 2006.

BACKGROUND: House Bill 1965 is a recommendation of the House Select Committee on Eminent Domain Powers. Part of the Committee's charge was to study the effect of the ruling in the United States Supreme Court case of *Kelo v. City of New London.* In that case, the court held that it was constitutional for the city to use its eminent domain power to take private property to be used as part of an economic development project. The city had determined that the area in which the property was located was sufficiently distressed to justify a program of economic rejuvenation. The petitioners' homes were taken so that the land could be redeveloped into a variety of commercial, residential, and recreational land uses. The city invoked a state statute that authorized the use of eminent domain to promote economic development to justify the takings, and the court held that the city's proposed

disposition of the petitioners' property was a "public use" and therefore constitutional. The court emphasized that nothing in its opinion precludes any state from placing further restrictions on the use of eminent domain.

The House Select Committee on Eminent Domain Powers began its work in the 2005-2006 interim, but its final report is not due until December 31, 2006. The Committee intends to resume work in the interim following the 2006 Regular Session and the following issues are among those to be considered:

- The adequacy of damages paid to persons whose property is condemned.
- Payment of damages to persons who operate businesses on condemned property.
- Payment of attorneys' fees and other expenses associated with condemnations.
- How to ensure that initial offers are sufficient so that contested condemnations can be reduced.

Wendy Graf Ray, counsel to House Judiciary III Committee, substantially contributed to this summary.

H1965e2-SMRU-CSRU-89

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1965
Corrected Copy 5/16/06

Short Title:	Eminent Domain Restrictions.	(Public)
Sponsors:	Representatives Goforth, Sherrill (Primary Sponsors); Almond, L. Allen, Brown, Clary, Culp, Grady, Harrison, Ed Jones, Justice, Justus, Martin, McGee, Preston, Rapp, Ray, Setzer, Stiller, Walend, and Wiley.	
Referred to:	Judiciary III.	

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE STATUTORY PURPOSES FOR WHICH EMINENT DOMAIN MAY BE USED BY PRIVATE CONDEMNORS, LOCAL PUBLIC CONDEMNORS, AND OTHER PUBLIC CONDEMNORS, AND FOR CERTAIN REVENUE BOND PROJECTS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-1 reads as rewritten:

"**§ 40A-1. Exclusive provisions.**

(a) Notwithstanding the provisions of any local act, it is the intent of the General Assembly that, effective July 1, 2006, the uses set out in G.S. 40A-3 are the exclusive uses for which the authority to exercise the power of eminent domain is granted to private condemnors, local public condemnors, and other public condemnors. Effective July 1, 2006, any local act granting the authority to exercise the power of eminent domain to a private condemnor, local public condemnor, or other public condemnor for a use or purpose other than those granted to it in G.S. 40A-3 is repealed. Provided that, any eminent domain action commenced before July 1, 2006, for a use or purpose granted in a local act, may be lawfully completed pursuant to the provisions of that local act. The provisions of this subsection shall not repeal any provision of a local act limiting the purposes for which the authority to exercise the power of eminent domain may be used.

(b) It is the intent of the General Assembly that the procedures provided by this Chapter shall be the exclusive condemnation procedures to be used in this State by all private condemnors and all local public condemnors. All other provisions in laws, charters, or local acts authorizing the use of other procedures by municipal or county governments or agencies or political subdivisions thereof, or by corporations, associations or other persons are hereby repealed effective January 1, 1982. Provided,

that any condemnation proceeding initiated prior to January 1, 1982, may be lawfully completed pursuant to the provisions previously existing.

(c) This chapter shall not repeal any provision of a local act ~~enlarging or~~ limiting the purposes for which property may be condemned. Notwithstanding the language of G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act creating any substantive or procedural requirement or limitation on the authority of a local public condemnor to exercise the power of eminent domain outside of its boundaries."

SECTION 2. G.S. 40A-3 reads as rewritten:

"**§ 40A-3. By whom right may be exercised.**

(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:

a. Not be less than 50 feet nor more than 100 feet in width; and

b. Comply with the provisions of G.S. 62-190(b).

The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.

(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding.

(5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors – Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(c) Other Public Condemnors. – For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.

(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.

(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.

(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.

(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.

(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.
(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.
(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article.
(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.
(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.
(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.
(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.
(13) A regional public transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter."

SECTION 3. G.S. 159-83(a)(1) reads as rewritten:

"(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to July 1, 2006."

SECTION 4. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1965

Short Title:	Eminent Domain Restrictions.	(Public)
Sponsors:	Representatives Goforth, Sherrill (Primary Sponsors); Almond, L. Allen, Brown, Clary, Culp, Grady, Harrison, Jones, Justice, Justus, Martin, McGee, Preston, Rapp, Ray, Setzer, Stiller, Walend, and Wiley.	
Referred to:	Judiciary III.	

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE STATUTORY PURPOSES FOR WHICH EMINENT DOMAIN MAY BE USED BY PRIVATE CONDEMNORS, LOCAL PUBLIC CONDEMNORS, AND OTHER PUBLIC CONDEMNORS, AND FOR CERTAIN REVENUE BOND PROJECTS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-1 reads as rewritten:

"**§ 40A-1. Exclusive provisions.**

(a) Notwithstanding the provisions of any local act, it is the intent of the General Assembly that, effective July 1, 2006, the uses set out in G.S. 40A-3 are the exclusive uses for which the authority to exercise the power of eminent domain is granted to private condemnors, local public condemnors, and other public condemnors. Effective July 1, 2006, any local act granting the authority to exercise the power of eminent domain to a private condemnor, local public condemnor, or other public condemnor for a use or purpose other than those granted to it in G.S. 40A-3 is repealed. Provided that, any eminent domain action commenced before July 1, 2006, for a use or purpose granted in a local act, may be lawfully completed pursuant to the provisions of that local act. The provisions of this subsection shall not repeal any provision of a local act limiting the purposes for which the authority to exercise the power of eminent domain may be used.

(b) It is the intent of the General Assembly that the procedures provided by this Chapter shall be the exclusive condemnation procedures to be used in this State by all private condemnors and all local public condemnors. All other provisions in laws, charters, or local acts authorizing the use of other procedures by municipal or county governments or agencies or political subdivisions thereof, or by corporations, associations or other persons are hereby repealed effective January 1, 1982. Provided,

that any condemnation proceeding initiated prior to January 1, 1982, may be lawfully completed pursuant to the provisions previously existing.

(c) This chapter shall not repeal any provision of a local act ~~enlarging or~~ limiting the purposes for which property may be condemned. Notwithstanding the language of G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act creating any substantive or procedural requirement or limitation on the authority of a local public condemnor to exercise the power of eminent domain outside of its boundaries."

SECTION 2. G.S. 40A-3 reads as rewritten:

"**§ 40A-3. By whom right may be exercised.**

(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:
   a. Not be less than 50 feet nor more than 100 feet in width; and
   b. Comply with the provisions of G.S. 62-190(b).

   The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.

(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding.

(5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors – Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(c) Other Public Condemnors. – For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.

(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.

(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.

(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.

(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.

(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.
(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.
(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article.
(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.
(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.
(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.
(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.
(13) A regional public transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter."

SECTION 3. G.S. 159-83(a)(1) reads as rewritten:

"(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to July 1, 2006."

SECTION 4. This act becomes effective July 1, 2006.

CS 6/20/06

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1048

Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1048-CSRK-40 [v.31]

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Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(7b) "Keg" means a portable container designed to hold and dispense in excess of eight gallons of malt beverage."

SECTION 2. Chapter 18B is amended by adding a new section to read:

"**G.S. 18B-403.1. Purchase-Transportation Permit for Keg or Kegs of Malt Beverages.**

(a) Purchase-transportation. A person who is not a permittee may purchase and transport for off-premises consumption a keg or kegs as defined in G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a purchase-transportation permit according to this section is a violation of 18B-303(b).

(b) Issuance. A person holding a permit pursuant to 18B-1001(2) may issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser. A copy of the purchase-transportation permit shall be maintained by the permittee for 30 days.

(c) Form. A purchase-transportation permit shall be issued on a printed form adopted and provided by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(d) Restrictions on Permit. A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the by the purchaser, and one by the permittee from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request.

(e) Violation. The first violation of this section shall result in a warning to the permittee."

SECTION 2A. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~ beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg or kegs of malt beverages for off-premises consumption, the permit required by G.S. 18B-403.1(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~ kegs for on-premise consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 3. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking Stations and Roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

(2) ~~Designates~~Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. The ~~plan~~ pattern need not be in writing and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test~~ to produce drivers license, registration and insurance information.

(3) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an

alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.1. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.2. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical

professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.3. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"**§ 20-38.4. Facilities.**

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county or the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the above functions listed in subdivisions (a)(1) and (a)(2) of this section.

"**§ 20-38.5. Motions and district court procedure.**

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.6. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the

findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions, and if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 5. Article 7 of Chapter 8C of the General Statutes is amended by adding a new rule of evidence to read:

"**Rule 707. Drug recognition expert and HGN testimony and opinion as to speed of an accident reconstruction expert.**

(a) Results of Horizontal Gaze Nystagmus (HGN) Test. – The results of a horizontal gaze nystagmus (HGN) test are admissible into evidence, and the opinion of the analyst is admissible as to whether the results are consistent with a chemical analysis or consistent with a person who is under the influence of a particular type or class of impairing substances, when the HGN test is administered by a person who has successfully completed training in HGN.

(b) Opinion of Drug Recognition Expert (DRE). – The opinion of a DRE that a person is under the influence of one or more impairing substances, and the opinion as to the category of such impairing substance or substances is admissible in any court or administrative hearing when the DRE holds a current certification as a DRE issued by the Department of Health and Human Services.

(c) Opinion as to Speed of a Vehicle. – Any person who is found by a court to be an expert in accident reconstruction who has performed a reconstruction of a crash or has reviewed the report of investigation may give an opinion as to the speed of a vehicle even if the expert did not actually observe the vehicle moving.

Nothing contained in this Rule shall be construed to prohibit cross-examination of any person as to their opinions and the basis for the opinions and shall not limit other opinion testimony otherwise admissible under the rules of evidence or court decision."

PART V. ALCOHOL SCREENING DEVICES

SECTION 6. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or

b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, and is admissible in a court, or an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~-results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 7. 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:

. . .

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

. . .

(45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada.~~ a province of Canada, or the Sovereign Nation of the Eastern Band of

the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina.

. . . ."

SECTION 8. G.S. 20-138.1(a) reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle.

SECTION 9. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The

results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

. . . ."

SECTION 10. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an

administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section ~~is a Class 2 misdemeanor.~~ shall be punished pursuant to G.S. 20-179. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

(c1) Notwithstanding any other provision of law, if a person either pleads or is found guilty of a violation of this section, a court may, with the defendant's consent (i) withhold entry of judgment and defer further proceedings, and (ii) place the defendant on probation for a minimum of one year upon such reasonable terms and conditions as it may require. Action may only be taken under this subsection if all of the following conditions are met:

(1) The defendant has no pending charges under Chapters 18B, 20, 14, or 90 of the General Statutes.

(2) The defendant has no prior convictions for a violation of this section or of Chapter 18B of the General Statues.

(3) The defendant has no prior convictions for an offense involving impaired driving under any federal or other States' statutes relating to the substances or paraphenelia listed in Articles 5, 5A, or 5B of Chapter 90 of the General Statues.

(c2) Notwithstanding any other provision of law, a court shall impose, at a minimum, all of the terms and conditions listed in this subsection for any defendant placed on probation pursuant to subsection (c1) of this section. The defendant shall:

(1) Obtain a substance abuse assessment within 30 days and comply with education or treatment requirements recommended by the assessment.

(2) Not operate a motor vehicle for at least 90 days.

(3) Perform 50 hours of community service and pay the community service fee.

(4) Submit at reasonable times to warrantless searches by a probation officer of his or her person, vehicle, and premises including drug and alcohol screening and testing and pay the costs of such screening and tests.

(5) Not possess or consume any alcoholic beverage or controlled substance unless the controlled substance is lawfully prescribed to the person.

(6) Pay court costs and all fees.

(7) Not violate any law of this or any other state or the federal government.

(8) Remain gainfully employed or in school as a full-time student as determined by the probation officer.

(9) Not violate any other reasonable condition of probation.

Upon violation of any term or condition of probation ordered pursuant to subsection (c1), or of this subsection, the court may enter an adjudication of guilt and proceed as otherwise provided.

(c3) Upon fulfillment of the terms and conditions of probation ordered under subsections (c1) or (c2) of this section, the court shall discharge the defendant and dismiss the proceedings against him if all of the following conditions are met:

(1) The defendant does not have any pending charges for violating any law of this State.

(2) The defendant has not violated any laws of this State, including infractions.

(3) The defendant has not been convicted of violating any federal or other States' statutes that are substantially similar to provisions in Chapters 18B, 20, 14, or 90 of the General Statutes.

Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions.

(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20 179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20 179.3, other than the requirement in G.S. 20 179.3(b)(1)c. G.S. 20 179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20 179.3 shall apply. G.S. 20 179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

SECTION 11. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 12. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 13. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if ~~he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a1)(2) is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if ~~he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) the commission of the offense in subdivision (a2)(2) is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a3)(2) is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a4)(2) is the proximate cause of the serious injury, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a5)(2) is the proximate cause of the death, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5), and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW

SECTION 14. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12 month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more, ~~0.04~~ 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

(5) ~~The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures,~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person is notified of his or her~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement ~~officer,~~ officer or chemical analyst, ~~in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and either may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~ officer ~~must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging~~ officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~ officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~

shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections,

the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20 138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20 179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20 179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A 133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A 41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20 17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20 139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 15. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if~~ Preventive ~~Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as~~

~~proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. – In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the type of analyses that they can perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the ~~charging~~ law enforcement officer's request

for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains

alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having

custody of the person shall allow the person access to a telephone to attempt to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d)(1) by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing

or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol

under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 16. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 17. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 18. G.S. 20-138.4 reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.**

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum,

(1) The alcohol concentration or the fact that the driver refused.

(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.

(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records,

(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.

(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.

(6) The name and agency of the charging officer and whether the officer is available.

(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 19.1. G.S. 7A-109.2 reads as rewritten:

"§ 7A-109.2. Records of dispositions in criminal ~~cases.~~cases; impaired driving integrated data system.

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;
(2) The reasons for any pretrial dismissal by the court;
(3) The reasons for any continuances granted in the case;
(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;
(5) The reasons for any suppression of evidence;
(6) The reasons for dismissal of charges at trial;
(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;
(8) The amount and reason for waiving or reduction of any fee or fine;
(9) The time or other conditions given to pay any fine, cost, or fees;
(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;
(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and
(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees.

SECTION 19.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-346.3. Impaired driving integrated data system report.

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State, by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction,

amount collected and amount still owed,, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR.

SECTION 20. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notices. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 21. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional

period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~ year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) the person violates any condition of the restoration;

(2) the person is convicted of any moving offense in this or another state;

(3) the person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

SECTION 21A. G.S. 20-17(a)(2) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(2) Impaired driving under G.S. 20-138.1. ~~Either of the following impaired driving offenses:~~

~~a. Impaired driving under G.S. 20-138.1.~~

~~b. Impaired driving under G.S. 20-138.2.~~"

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 22. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence

appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of the subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating Factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the Jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the

jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury Selection. -- A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court

(1) Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant Pleads Guilty to the Charge Only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed

below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he ~~must~~ shall note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

~~(3) Not operate a motor vehicle for a term of 60 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

~~(3) Not operate a motor vehicle for a term of 30 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided

such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions.. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor ~~by the greater weight of the evidence,~~ beyond a reasonable doubt, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment,

and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment or ~~community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (s)(2), the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on

weekends if the court determines that, at the time of his entrance to the jail, if

(i) the defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

(ii) the defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts."

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 23. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 24. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 25. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

. . .

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year old. A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8) or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 26. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 27. G.S. 18B-1003(c) reads as rewritten:

(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;

(3) Convicted of an alcoholic beverage offense within two years; or

(4) Convicted of a misdemeanor controlled substances offense within two years.

(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 28. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judges shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 29. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;

2. Before the judge who presided at trial;

3. Before the end of the session if made in superior court; and

4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must

provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in District Court without the signature of the District Attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate belief without the District Attorney's signature 10 business days after the District Attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

PART XIX. EFFECTIVE DATE

SECTION 30. Sections 18, 19.1, and 19.2 become effective upon the effective date of the next rewrite of the superior court clerks system by the Administrative Office of the Courts. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

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

H1048-ARK-51 [v.2]

Date 6-20 ,2006

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

Sen. ALBERTSON

moves to amend the bill on page 1/2, between lines AS APPROPRIATE and ____, by inserting the following:

SECTION ____. G.S. 7A-304 is amended by adding a new subsection to read:

"(f) A person charged for any of the offenses set forth in this subsection may, in lieu of the payment of fines or the making of court appearances, elect to provide proof of compliance to the district attorney prior to or on the scheduled court appearance date, and the district attorney may in turn agree to voluntarily dismiss the case in exchange for the person's signed waiver of appearance and payment of court costs in the sum of fifty dollars ($50.00). Court costs assessed under this subsection are for the support of the General Court of Justice and shall be remitted to the State Treasurer.

Compliance dismissals authorized by this subsection may be obtained only for the following offenses:

(1) No operator's license, in violation of G.S. 20-7(a).
(2) Driving while license revoked, not alcohol-related, in violation of G.S. 20-28.
(3) Registration violations under G.S. 20-111(1) though (3).
(4) Failure to notify the Division of Motor Vehicles of change of address in violation of G.S. 20-7.1.
(5) Expired license, in violation of G.S. 20-7.
(6) Unsafe tires, in violation of G.S. 20-122.1.
(7) Inspection violations under G.S. 20-183.2.
(8) No registration card, in violation of G.S. 20-111.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

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

H1048-ARK-51 [v.2]

(9) Failure to comply with license restrictions, in violation of G.S. 20-179.3.
(10) Failure to obtain commercial drivers license, in violation of G.S. 20-37.12.
(11) Allowing unlicensed person to drive, in violation of G.S. 20-32.
(12) Failure to notify the Division of Motor Vehicles of change of address registration, in violation of G.S. 20-67.
(13) Rearview mirror violations under G.S. 20-117.1(a).
(14) Safety equipment violations under G.S. 20-123.2, 20-124, 20-125, 20-125.1, 20-126, 20-127, 20-128, 20-128.1, 20-129, and 20-129.1.
(15) Child restraint violations under G.S. 20-137.1.
(16) Motorcycle and moped helmet violations under G.S. 20-140.4(2).
(17) Any violation arising from a vehicular accident or collision in which a citation is issued, but which in the interests of justice the State elects to accept a compliance dismissal rather than prosecute.

For purposes of this section, "compliance" means proof satisfactory to the district attorney that the person has corrected the violation and is therefore in compliance with the applicable statute. However, a compliance dismissal shall not be valid in any case in which the person's compliance, if presented to the court, would qualify for a statutory defense to the charge, such as those defenses contained in G.S. 20-35(c), 20-122.1(b), 20-127(e), 20-133(b), and 20-137.1(c)."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

Wanda Joyner (Sen. Clodfelter)

From: Hal Pell (Research)
Sent: Wednesday, June 21, 2006 2:45 PM
To: @Senate/Judiciary I
Cc: Walker Reagan (Research); Bill Gilkeson (Research)
Subject: Question on emissions related fine

During the last hearing on H1048 PCS, there were questions concerning emission/inspection penalties. Susan Sitze has obtained the following information from a member of our staff, which indicates that the program and penalties are federally mandated. Hal

1) What are the requirements under the federal Clean Air Act with regard to an emissions inspection program?

The Clean Air Act Amendments of 1990 require emissions inspection and maintenance (I/M) programs in many jurisdictions to ensure that emission control systems operate properly throughout the life of a vehicle. These programs are implemented in areas violating federal air quality standards (non-attainment areas) and in other areas seeking to improve air quality. The inspection typically involves regularly scheduled exhaust tests measuring certain pollutants of concern, including oxides of nitrogen (Nox), carbon monoxide (CO), and others. The U.S. Environmental Protection Agency (EPA) has oversight and development responsibility for I/M programs, which are implemented by state agencies. In North Carolina, the program is administered jointly by the Division of Air Quality of the Department of Environment and Natural Resources (DENR) and the Division of Motor Vehicles of the Department of Transportation.

States with non-attainment areas are required to submit State Implementation Plans (SIPs) to EPA describing the efforts the State will take to return the non-attainment areas to compliance with the federal ambient air quality standards. EPA then reviews these plans to ensure that the SIP would be effective in helping reach compliance. The requirements for preparation, adoption and submittal of SIPs are detailed in Part 51 of Chapter I, Title 40 of the Code of Federal Regulations (available online at: http://www.access.gpo.gov/nara/cfr/waisidx_05/40cfr51_05.html).

2) What would the effect of a repeal or modification of the $250 penalty for failure to comply with the I/M requirements?

EPA requires all approved I/M programs to have effective enforcement mechanisms to ensure compliance (40 CFR 51.493(f)). The primary enforcement methods identified by EPA are listed in 40 CFR 51.361 and include the following:

- Denial of motor vehicle registration for non-compliant vehicles
- Sticker-based enforcement programs
- Computer matching programs that identify vehicles that are not in compliance within 4 months of the compliance deadline.

In regards to your question, EPA requires that motorists who violate the I/M pay monetary fines at least as great as the estimated cost of compliance with I/M requirements (e.g., the test fee plus the minimum waiver expenditure) for the continued operation. In North Carolina, the waiver amount is $75.00 if the vehicle is a pre-1981 or older model and is $200.00 if the vehicle is a 1981 or newer model. In addition, the emissions inspection fee is approximately $30.00. This would mean that the minimum amount the fine could be to meet EPA's current requirement is $230.00. The current fine

for violating the emissions inspection requirement is $250.00. This penalty, codified in G.S. 20-183.8A (Civil penalties against motorists for emissions violations.) was established in 1994.

If North Carolina chose to repeal or modify the penalty for failure to comply with I/M requirements, the State would have to submit a request to revise its SIP to EPA. The State would need to demonstrate to EPA that the revised SIP can be enforced effectively and also maintain the relevant air quality standards. The State must also continue to fully implement and enforce the program until such a demonstration can be made and approved by EPA.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1048 DATE 6-20-06

S. B. No. _____ Amendment No. #2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ~~PERFECT~~ H1048-CSRK-40 [v.3] ~~H1048-ARK-51[v.2]~~

Rep.) ALBERTSON

Sen.)

1 moves to amend the bill on page 2, line 18

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4

5 the applicable statute, or that the underlying

6 condition which gave rise to the

7 violation is no longer present.

8 However, a compliance dismissal shall

9 not be valid in any case in"

10

11

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SIGNED Charles W. Albertson

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1048 DATE 6-20-06

S. B. No. _____ Amendment No. #3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H 1048-CSRK-40 [v.3]
PERFECT H 1048-ARK-51 [2]

Rep.) Sen.) NESBITT

1 moves to amend the bill on page 2, line ~~#~~ 22 line
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 Nothing in this sub section shall
5 ~~preclude the District Attorney~~
6
7 limit the discretion of the
District Attorney to otherwise
9 dismiss a charge.
10
11
12
13
14
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16
17
18
19

SIGNED Martha Nesbitt

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1048

Short Title:	Identity Theft Protection Act of 2005.	(Public)
Sponsors:	Senators Clodfelter; Albertson, Allran, Dalton, Dannelly, Garrou, Graham, Hagan, Hoyle, Kinnaird, Purcell, Rand, Soles, Swindell, Thomas, and Weinstein.	
Referred to:	Judiciary I.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Identity Theft Protection Act.

"**§ 75-60. Title.**

This Article shall be known and may be cited as the "Identity Theft Protection Act".

"**§ 75-61. 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. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.

(2) "Consumer". – An individual.

(3) "Consumer reporting agency". – Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) "Consumer report" or "credit report". – Any written, oral, or other communication of any information by a consumer reporting agency

bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

a. Credit to be used primarily for personal, family, or household purposes;

b. Employment purposes; or

c. Any other purpose authorized under 15 U.S.C. § 168lb.

(5) "Credit card". – Has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).

(6) "Credit header information". – Written, oral, or other communication of any information by a consumer reporting agency regarding the social security number of the consumer, or any derivative thereof, and any other personally identifiable information of the consumer that is derived using any nonpublic personal information, except the name, address, and telephone number of the consumer if all are listed in a residential telephone directory available in the locality of the consumer.

(7) "Debit card". – Any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(8) "Disposal" includes:

a. The discarding or abandonment of records containing personal information, and

b. The sale, donation, discarding or transfer of any medium, including computer equipment, or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.

(9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(10) "Personal information". – An individual's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b) or any identifying information, when not in connection with the individual's first name or first initial and last name, that if compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised.

(11) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of

physical form or characteristics. "Records" 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.

(12) "Security breach". – Unauthorized acquisition of records or data that compromises the security, or confidentiality of personal information. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach, provided that the personal information is not used for a purpose unrelated to the business or subject to further unauthorized disclosure.

(13) "Security freeze". – Notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

"**§ 75-62. Social security number protection.**

(a) Except as provided in subsection (b) of this section, a business may not do any of the following:

(1) Intentionally communicate or otherwise make available to the general public an individual's social security number.

(2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless State or federal law requires the social security number to be on the document to be mailed.

(6) Sell, lease, loan, trade, rent, or otherwise disclose an individual's social security number to a third party for any purpose without written consent to the disclosure from the individual.

(b) Subsection (a) of this section shall not apply in the following instances:

(1) Subsection (a)(5) of this section shall not apply when a social security number is included in an application or in documents related to an enrollment process, or to establish an account, contract, or policy. A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) Subsection (a)(6) of this section shall not apply:

a. To the collection, use, or release of a social security number for internal verification or administrative purposes provided that no consideration is exchanged between the person and the third party for the collection, use, or release of the social security number.

b. To the collection, use, or release of a social security number to investigate or prevent fraud or to conduct background checks.

c. To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

d. To a business providing the social security number to a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(c) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this Article are implemented on or before the dates specified in this section.

(d) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees.

(e) This section becomes effective July 1, 2006.

"**§ 75-63. Security freeze.**

(a) If a consumer elects to place a security freeze on his or her credit report, a credit reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer may elect to place a "security freeze" on his or her credit report by making a request directly to a consumer reporting agency by any of the following methods:

(1) By certified mail.

(2) By telephone by providing certain personal identification.

(3) Through a secure electronic mail connection if such connection is made available by the agency.

(c) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written or telephone request from the consumer or three business days after receiving a secure electronic mail request.

(d) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(e) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer reporting agency via telephone, certified mail, or secure electronic mail, request that the freeze be temporarily lifted, and provide all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (d) of this section.

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (e) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency may develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act (e-Sign) for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (e) of this section in an expedited manner.

(h) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsection (e) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subsection, the consumer reporting agency shall notify the consumer in writing five business days prior to removing the freeze on the consumer's credit report.

(i) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(j) If a third party requests access to a consumer credit report on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit reporting agency must notify the consumer that an attempt has been made to access the credit report and by whom.

(k) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification, and

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (d) of this section.

(l) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(m) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

(n) A consumer may not be charged for any security freeze services, including, but not limited to, the placement or lifting of a security freeze. A consumer, however, can be charged no more than five dollars ($5.00) only in the following discrete circumstances:

(1) If the consumer fails to retain the original personal identification number provided by the agency, the consumer may not be charged for a one-time reissue of the charge no more than five dollars ($5.00) for subsequent instances of loss of the personal identification number.

(2) The consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time the consumer requests a security freeze on his or her credit report be temporarily lifted pursuant to subsection (e) of this section within a calendar year.

(3) For consumers that remove a security freeze pursuant to subsection (k) of this section, the consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time the consumer requests a security freeze be placed on his or her credit report be placed pursuant to subsection (b) within a calendar year.

(o) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"**North Carolina Consumers Have the Right to Obtain a Security Freeze.**

You may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency.

(2) Proper identification to verify your identity.

(3) Proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze – either for a period of time if you are shopping around or specifically for a certain creditor – a few days before actually applying for new credit.

If you lift your freeze more than two times in a calendar year, you may be charged no more than five dollars ($5.00) for each subsequent time you wish to impose a security freeze on your credit report. You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(p) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (e) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) A State or local agency which administers a program for establishing and enforcing child support obligations.

(5) The State or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(6) A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act.

(7) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(8) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(q) If a consumer reporting agency erroneously, whether by accident or design, violates the security freeze by releasing credit information that has been placed under a

security freeze or violates any other provision in this section, the affected consumer is entitled to:

(1) Notification within five business days of the release of the information, including specificity as to the information released and the third-party recipient of the information.

(2) File a civil action pursuant to G.S. 75-16. In addition to the remedies therein, a consumer may recover statutory damages of one thousand dollars ($1,000) per violation and seek injunctive relief to prevent or restrain further.

"**§ 75-64. Protection for credit header information.**

(a) A consumer reporting agency may furnish a consumer's credit header information only to those who have a permissible purpose to obtain the consumer's consumer report under section 604 of the federal Fair Credit Reporting Act, as codified in 15 U.S.C.§ 1681(b), or in the following circumstances:

(1) When acting pursuant to a court order, warrant, or subpoena or when otherwise required by law.

(2) To a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(3) To investigate or prevent fraud or to conduct background checks.

(4) To financial institutions for compliance with Section 326 of the USA PATRIOT Act.

(b) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), which ever is greater, plus reasonable court costs and attorneys' fees.

"**§ 75-65. Destruction of personal information records.**

(a) Any business that conducts business in North Carolina and any business that maintains or otherwise possesses personal information of a resident of North Carolina must take all reasonable measures to protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures must include, but may not be limited to:

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that information cannot be practicably read or reconstructed;

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other non-paper media containing personal information so that the information cannot practicably be read or reconstructed;

(3) Implementing and monitoring compliance with policies and procedures that require reasonable steps to be taken to ensure that no unauthorized person will have access to the personal information for the period between the discarding of the record and the record's destruction.

(4) Comprehensively describing and classifying procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity, including corporate and employee handbooks and similar corporate documents.

(c) A business may after due diligence enter into a written contract, with and monitor compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include, but may not be limited to, one or more of the following:

(1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent.

(2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review.

(3) Reviewing and evaluating the disposal business's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in North Carolina or disposes of personal information of residents of North Carolina must take all reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information.

(e) This section does not apply to any bank or financial institution that is subject to the privacy and security provision of the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq., as amended, or any health insurer that is subject to the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.

(f) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees.

"**§ 75-66. Protection from security breaches.**

(a) Except as provided in subsection (b) of this section, any business that maintains or otherwise possesses personal information of residents of North Carolina or any business that conducts business in North Carolina that maintains or otherwise possesses personal information of consumers in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, or with any measures necessary to determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system.

(b) A business shall not be required to disclose a technical security breach that does not seem reasonably likely to subject consumers to a risk of criminal activity.

(c) The notice required by this section may be delayed if a law enforcement agency determines that notification may impede a criminal investigation. The notice required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the data collector demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or the data collector does not have sufficient contact information. Substitute notice shall consist of all the following:

a. E-mail notice when the data collector has an e-mail address for the subject persons.

b. Conspicuous posting of the notice on the data collector's Web site page, if one is maintained.

c. Notification to major statewide media.

(e) Any waiver of the provisions of this Article is contrary to public policy, and is void and unenforceable.

(f) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees."

SECTION 2. G.S. 14-113.21 reads as rewritten:

"**§ 14-113.21. Venue of offenses.**

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in ~~any county in which~~ the county where the victim resides, where the perpetrator resides, where any part of the financial identity fraud took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever actually present in that county."

SECTION 3. Article 19C of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-113.21A. Investigation of offenses.**

(a) A person who has learned or reasonably suspects that he or she has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over his or her actual residence. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency may take the complaint, issue an incident report, and provide

the complainant with a copy of the report and may refer the report to a law enforcement agency in that different jurisdiction.

(b) Nothing in this section interferes with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed or report issued under this section is not required to be counted as an open case for purposes such as compiling open case statistics."

SECTION 4. Chapter 132 is amended by adding a new section to read:

"**§ 132-1.8. Social security numbers and other personal identifying information.**

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsection (c) of this section, any State or local government agency, or any agent, employee, or contractor of a government agency, shall not do any of the following:

(1) Collect a person's social security number unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a person's social security number, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a public records request.

(3) Fail, when collecting a person's social security number, to provide, at the time of or prior to the actual collection of the social security number by that agency, that person upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information," as used in this section, shall have the same meaning as in G.S. 14-113.20(b).

(6) Print an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit his or her social security number overt the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless State or federal law required that the social security number be on the document to be mailed.

(10) Sell, lease, loan, trade, rent, or otherwise disclose an individual's social security number to a third party for any purpose without written consent to the disclosure from the individual.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) Social security numbers and identifying information may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) Social security number or other identifying information may be disclosed pursuant to a court order, warrant, or subpoena.

(d) No person preparing or filing a document to be recorded in the official records by the register of deeds may include any person's social security number or other identifying information in that document, unless otherwise expressly required by law. If a social security number or other identifying information is or has been included in a document presented to the register of deeds for recording in the official records of the county before, on, or after the effective date of this section, it may be made available as part of the official record available for public inspection and copying.

(e) Any person or the person's attorney or legal guardian, has the right to request that a register of deeds remove, from an image or copy of an official record placed on a register of deeds' publicly available Internet website or a publicly available Internet website used by a register of deeds to display public records or otherwise made electronically available to the general public by such register, his or her social security number or other identifying information contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail,

facsimile, or electronic transmission, or delivered in person to the register of deeds. The request must specify the identification page number that contains the social security number or other identifying information to be redacted. The register of deeds shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction. No fee will be charged for the redaction of a social security number or other identifying information pursuant to such request.

(f) A register of deeds shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet website or remote electronic site made available by the register of deeds and used for the ordering or display of official records or images or copies of official records a notice, stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation in the official records may not include a social security number or other identifying information as defined in G.S. 14-113.20(b) in such document, unless expressly required by law.

(2) Any person has a right to request a register of deeds to remove, from an image or copy of an official record placed on a register of deeds' publicly available Internet website or on a publicly available Internet website used by a register of deeds to display public records or otherwise made electronically available to the general public, any social security number or other identifying information as defined in G.S. 14-113.20(b) contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds. The request must specify the identification page number that contains the social security number or other identifying information to be redacted. No fee will be charged for the redaction of a social security number or other identifying information pursuant to such a request.

(g) Any affected person may petition the superior court for an order directing compliance with this section.

(h) This section shall take effect on October 1, 2005, except that subsections (b)(6) and (b)(9) of this section shall take effect July 1,2007."

SECTION 5. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Miscellaneous.

"**§ 120-61. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.**

Agencies of the State of North Carolina shall evaluate and report to the General Assembly about their efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying

information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose."

SECTION 6. G.S. 14-113.20 reads as rewritten:

"**§ 14-113.20. ~~Financial identity fraud~~Identity theft.**

(a) A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term "identifying information" as used in this Article includes the following:

(1) Social security numbers.
(2) Drivers ~~license~~ license, State identification card, or passport numbers.
(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
(8) Electronic identification ~~numbers.~~numbers, names, or other identification.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.
(11) Biometric data.
(12) Fingerprints.
(13) Passwords.
(14) Parent's legal surname prior to marriage.

(c) It shall not be a violation under this Article for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so."

SECTION 7. The Revisor of Statutes shall make the following technical and conforming corrections:

(1) Rename Article 19C of Chapter 14 of the General Statutes from "Financial Identity Fraud" to "Identity Theft."

(2) Replace the phrase "financial identity fraud" with the phrase "identity theft" wherever the terms appear throughout Article 19C of Chapter 14 of the General Statutes.

SECTION 8. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person ~~to commit an infraction or crime~~ and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction."

SECTION 9. G.S. 1-539.2C reads as rewritten:

"**§ 1-539.2C. Damages for identity ~~fraud.~~theft.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil damages. Damages may be in an amount of up to five thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party."

SECTION 10. Severability. – The provisions of this act are severable. If any phrase, clause, sentence, provision, or section is declared to be invalid or preempted by federal law or regulation, the validity of the remainder of this act shall not be affected thereby.

SECTION 11. Effective Date. – This act becomes effective December 1, 2005, and shall be applicable to offenses occurring, and to actions arising, on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-20-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
TROY PAGE	N.C. Sentencing Commission
Debbie Davies	Innovation Research + Training, Inc.
Dale Pratt-Wilson	Coalition for Alcohol & Drug Free Teenagers
Chris Medlin	NCATL
Holly Bryan	NCATL
Paul Glover	DHHS
AL EISELE	DHHS
EDDIE BUFFALOE	DHHS
Mark Trawick	Don Beason Intern
[signature]	NC Troy Assoc. RANC
[signature]	Institute of Govt.

Chapel Hill & Carrboro

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6-20-06
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Robert Lee Guy	DCC / DOC
[illegible]	DCC / DOC
[illegible]	Conference of DA's
[illegible]	—
[illegible]	
JOHN POPE	CIVITAS INSTITUTE
SUSANNE STREBS	NCRA
Elizabeth Dalton	NCRMA
[illegible]	AOC
Megan Glazier	Rep. Glazier
Bryan Ball	Fiscal Research

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Cathy Matthews	DMV
	Capitol Broadcasting
Cameron Contizano	Daily Bulletin
Cam Cover	BPMHL
Molly Ryan	NCSBA
Jill Shotzberger	ACLU-NC
Rebekah Gonçalves	ACLU-NC
Paula L. Wolf	ACLU-NC
Paige O'Halloran	GOV's Office
	LLRP
John Goodman	ACCRE

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Erin Gilroy	NC Conservation Network
Henry Hinton	N.C.B.A.
[signature]	atty

Principal Clerk ____
Reading Clerk ____

REVISED: SB-1990 & SB1991 ADDED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 22, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1048	Governor's DWI Task Force Recommendations.	Representative Hackney
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1844	Executive Branch Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1846	Contribution Changes.	Representative Ross Representative Hackney Representative Howard Representative Eddins
SB 1694	State Government Ethics Act.	Senator Rand
SB 1990	Divide Superior Court District 13.	Senator Soles, Jr.
SB 1991	District 13 County Resident Judgeships.	Senator Soles, Jr.

Judiciary 1 Committee

June 22, 2006 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:05 a.m. with sixteen members present. He introduced Pages; Brea Wilkerson, Tiffany Owens, Jekeya Taylor, Kimberly Gunter, Brittany Beatty from Durham, NC, Paige Hixon, from Clemmons, NC, and Sadie Cooke, from Gastonia, NC.

SB-1991 (District 13 County Resident Judgeships) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Bill sponsor, Senator R.C. Soles explained that the bill would provide balance among Bladen, Brunswick, and Columbus Counties. Comprising the District Court District 13, for district court judges, and divides Superior Court District 13 into two separate superior court districts. He said SB-1990 and SB-1991 would be combined into one bill. Senator Soles then moved for a Favorable Report. Senator's Richard Stevens, Jeanne Lucas, Tony Rand, Andrew Brock, and Phillip Berger had questions. The questions were answered by Senator Soles. Senator Soles offered an Amendment to the bill on page 4, lines 29 through 32. (See attached Amendment). Senator Clodfelter called for a vote on Senator Soles motion for a Favorable Report. All members voted yes. Motion carried.

HB-1048 (Governor's DWI Task Force Recommendations) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Hal Pell explained the bill. Senator Rand offered Amendment #1 to the bill on page 5, line 1 (See attached Amendment). Senator Andrew Brock moved for adoption of Amendment All members voted yes. Motion carried. Senator Martin Nesbitt offered Amendment #2 on page 43; lines 17 & 18 (See attached Amendment). Staff attorney, Hal Pell explained the Amendment. Senator Rand moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Tony Rand offered a Perfecting Amendment #3 (See attached Amendment), and moved for adoption of the Amendment. All members voted yes. Motion carried. Senator's Tony Rand, Jerry Tillman, Richard Stevens, R.C. Soles, and Jeanne Lucas had questions. Ms. Kimberly Overton with the Conference of District Attorney's Office

and Senator Clodfelter answered the questions. Senator Martin Nesbitt offered a Perfecting Amendment #4 on page 11. Lines 19 & 20. (See attached Amendment). Senator Charlie Albertson had a question. Amendment was withdrawn by Senator Nesbitt. Senator Tony Rand offered Amendment #5 on page 47, line 15. (See attached Amendment). Senator's Andrew Brock, R.C. Soles, Richard Stevens and Charlie Albertson had questions. Senator Rand and Ms. Overton answered the questions. Senator Rand moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Martin Nesbitt offered Amendment #6 on page 9, lines 12-14, 20-23, and page 10, lines 2-4 and 17-20, and moved for adoption. All members voted yes. Motion carried. Senator Martin Nesbitt offered Amendment #7, on Section G.S.20-138.3 to rewrite line 5. (See attached Amendment) Senator's Pete Brunstetter, Andrew Brock, Charlie Albertson, R.C. Soles, and Martin Nesbitt had questions. Ms. Overton answered the questions. Amendment was withdrawn by Senator Nesbitt. Senator Phillip Berger offered Amendment #8, page 1, lines 17 & 17 (See attached Amendment). Senator Janet Cowell moved for adoption. Senator Clodfelter called for a vote. The vote was not clear. He then called for a show of hands. The majority of members voted yes. Motion carried. Senator Clodfelter stated that the J-1 Committee would reconvene at 1:00 to continue hearing this bill.

Being no further business the meeting adjourned at 11:00 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

Judiciary 1 Committee

June 22, 2006 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 1:03 p.m. with fourteen members present.

HB-1048 (Governor's DWI Task Force Recommendations) Committee Substitute from the 10:00 a.m. meeting was brought back before the Committee for continued discussion, and Amendments. Senator Martin Nesbitt offered Amendment #9 on page 10, line 24, through page 12, line 35 (See attached Amendment) Staff attorney, Hal Pell explained the changes. Senator's R.C. Soles and Phillip Berger had questions. Mr. Pell answered the questions. Senator Nesbitt moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Vernon Malone offered Amendment #10 on page 2, lines 28 & 29, and page 2/ lines 35 & 36. (See attached Amendment) Mr. Pell explained changes. Senator's Soles had a question. Mr. Pell answered the question. Mr. Dick Taylor from NC Academy of Trial Lawyers, spoke on the bill, and answered the question. Senator Jeanne Lucas had a question regarding language in the Amendment. Senator Malone withdrew the Amendment. (See attached Amendment). Senator Pete Brunstetter offered Amendment #11 on page 9, line 13, page 9, and lines 20 through 23, and page 10, line 3, page 10, lines 17-20. (See attached Amendment). Senator Jeanne Lucas offered a Perfection Amendment to Senator Brunstetter's Amendment. Senator Brunstetter then offered a Substitute Amendment. Senator's Lucas, Brock and Rand had questions. The questions were answered by Mr. Pell. Senator Clodfelter called for a vote. There was a majority vote on the Amendment as perfected. Amendment was adopted. Senator Vernon Malone offered Amendment #12. (See attached Amendment). Senator Janet Cowell offered a Perfection Amendment to Senator Malone's Amendment, and asked for adoption of the Amendment as perfected. All members voted yes. Motion carried. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 2:15 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, June 26, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

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

S.B. **1991** District 13 County Resident Judgeships.

Draft Number:	PCS 75552
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Final

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1991
PROPOSED COMMITTEE SUBSTITUTE S1991-PCS75552-TB-2

Short Title: District 13 County Resident Judgeships. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE BALANCE AMONG THE COUNTIES IN THE RESIDENCY OF DISTRICT COURT JUDGES IN DISTRICT COURT DISTRICT 13 AND TO DIVIDE SUPERIOR COURT DISTRICT 13.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-133 is amended by adding a new subsection to read:

"(b2) The qualified voters of District Court District 13 shall elect all six judges established for the District in subsection (a) of this section, but only persons who reside in Bladen County may be candidates for one of those judgeships, only persons who reside in Columbus County may be candidates for one of those judgeships, and only persons who reside in Brunswick County may be candidates for two of those judgeships. The district court judgeship established for residents of Bladen County by this subsection shall be the judgeship currently held by Judge Phillips, who resides in Bladen County. The district court judgeship established for residents of Columbus County by this subsection shall be the judgeship currently held by Judge Jolly, who resides in Columbus County. The district court judgeships established for residents of Brunswick County by this subsection shall be the judgeships currently held by Judge Barefoot and Judge Warren, who reside in Brunswick County. Those judges' successors shall be elected for four-year terms in the 2008 general election. Candidates for the remaining judgeships in District 13 may be residents of any county within the district."

SECTION 2. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges

First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	3
Second	4A	Duplin, Jones, Sampson	1
Second	4B	Onslow	1
Second	5A	(part of New Hanover, part of Pender see subsection (b))	1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover, see subsection (b))	1
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	2
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland,	1

			see subsection (b))	
	Fourth	12B	(part of Cumberland, see subsection (b))	1
	Fourth	12C	(part of Cumberland, see subsection (b))	2
	Fourth	~~13~~ 13A	Bladen, ~~Brunswick,~~ Columbus	~~2~~ 1
	Fourth	13B	Brunswick	1
	Third	14A	(part of Durham, see subsection (b))	1
	Third	14B	(part of Durham, see subsection (b))	3
	Third	15A	Alamance	2
	Third	15B	Orange, Chatham	2
	Fourth	16A	Scotland, Hoke	1
	Fourth	16B	Robeson	2
	Fifth	17A	Rockingham	2
	Fifth	17B	Stokes, Surry	2
	Fifth	18A	(part of Guilford, see subsection (b))	1
	Fifth	18B	(part of Guilford, see subsection (b))	1
	Fifth	18C	(part of Guilford, see subsection (b))	1
	Fifth	18D	(part of Guilford, see subsection (b))	1
	Fifth	18E	(part of Guilford, see subsection (b))	1
	Sixth	19A	Cabarrus	1
	Fifth	19B	Montgomery, Randolph	1
	Sixth	19C	Rowan	1
	Fifth	19D	Moore	1
	Sixth	20A	Anson, Richmond, Stanly	2
	Sixth	20B	Union	1
	Fifth	21A	(part of Forsyth, see subsection (b))	1
	Fifth	21B	(part of Forsyth, see subsection (b))	1
	Fifth	21C	(part of Forsyth, see subsection (b))	1
	Fifth	21D	(part of Forsyth, see subsection (b))	1
	Sixth	22	Alexander, Davidson,	3

		Davie, Iredell	
Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1
Eighth	24	Avery, Madison, Mitchell, Watauga, Yancey	2
Seventh	25A	Burke, Caldwell	2
Seventh	25B	Catawba	2
Seventh	26A	(part of Mecklenburg, see subsection (b))	2
Seventh	26B	(part of Mecklenburg, see subsection (b))	3
Seventh	26C	(part of Mecklenburg, see subsection (b))	2
Seventh	27A	Gaston	2
Seventh	27B	Cleveland, Lincoln	2
Eighth	28	Buncombe	2
Eighth	29A	McDowell, Rutherford	1
Eighth	29B	Henderson, Polk, Transylvania	1
Eighth	30A	Cherokee, Clay, Graham, Macon, Swain	1
Eighth	30B	Haywood, Jackson	1."

SECTION 3. The superior court judgeship established for District 13A by Section 2 of this act shall be filled by the judge currently serving District 13 who resides in Bladen or Columbus County, who shall serve until the expiration of that judge's current term.

SECTION 4. The superior court judgeship established for District 13B by Section 2 of this act shall be filled by the judge currently serving District 13 who resides in Brunswick County, who shall serve until the expiration of that judge's current term.

SECTION 5. Section 5 of this act becomes effective October 1, 2006. Section 1 of this act becomes effective October 1, 2006, or the date upon which Section 1 of this act is approved under section 5 of the Voting Rights Act of 1965, whichever is later. Sections 2, 3, and 4 of this act become effective October 1, 2006, or the date upon which Section 2 of this act is approved under section 5 of the Voting Rights Act of 1965, whichever is later.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-22-06

S. B. No. 1991 Amendment No. #1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1991-CSRU-92 [v. 4]

Rep.)
(Sen.) SOLES

1 moves to amend the bill on page 4, lines 29-32

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE LINES AND BY RENUMBERING THE

4 REMAINING SECTION ACCORDINGLY; AND

5

6 ON PAGE 4, LINE 36, BY DELETING THE WORDS

7 "3, 4 AND 5" AND SUBSTITUTING "3 AND 4".

8

9

10

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13

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SENATE BILL 1991:
District 13 Judgeships/Superior Ct. Division

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 22, 2006
Introduced by:	Sen. Soles	**Summary by:**	O. Walker Reagan
Version:	PCS to First Edition H1991-CSRU-92		Committee Co-Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 1991 would provide balance among Bladen, Brunswick, and Columbus Counties, comprising the District Court District 13, for district court judges, and divides Superior Court District 13 into two separate superior court districts.

CURRENT LAW: Currently all 6 district court judges of District 13, consisting of Bladen, Brunswick and Columbus, are elected district-wide and may be a resident of any of the counties within the district. Also currently there are 2 superior court judges of District 13, also consisting of Bladen, Brunswick and Columbus Counties.

BILL ANALYSIS: Section 1 of the Proposed Committee Substitute would specify that of the 6 district court judges elected in District 13, one judge must be a resident of Bladen County, one a resident of Columbus County, and two residents of Brunswick County. The remaining two judges may be residents of any of the three counties.

Sections 2, 3, and 4 divide Superior Court District 13, consisting of Bladen, Brunswick and Columbus Counties, into two districts, District 13A, consisting of Bladen and Columbus Counties, and District 13B, consisting of Brunswick County. These sections also designate which current sitting judges are designated for each district.

Section 5 directs that $47,608 appropriated to the Judicial Department for the 2006-2007 fiscal year is to be used to upgrade one superior court judge to a senior resident superior court judge.

EFFECTIVE DATE: The bill becomes effective October 1, 2006, or the dates Sections 1 and 2 are approved under section 5 of the Voting Rights Act of 1965, whichever is later.

S1991e1-SMRU-CSRU-92

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1991

Short Title:	District 13 County Resident Judgeships.	(Public)
Sponsors:	Senators Soles; and Rand.	
Referred to:	Appropriations/Base Budget.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE BALANCE AMONG THE COUNTIES IN THE RESIDENCY OF DISTRICT COURT JUDGES IN DISTRICT COURT DISTRICT 13.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-133 is amended by adding a new subsection to read:

"(b2) The qualified voters of District Court District 13 shall elect all six judges established for the District in subsection (a) of this section, but only persons who reside in Bladen County may be candidates for one of those judgeships, only persons who reside in Columbus County may be candidates for one of those judgeships, and only persons who reside in Brunswick County may be candidates for one of those judgeships. The district court judgeship established for residents of Bladen County by this subsection shall be the judgeship currently held by Judge Phillips, who resides in Bladen County. The district court judgeship established for residents of Columbus County by this subsection shall be the judgeship currently held by Judge Jolly, who resides in Columbus County. The district court judgeship established for residents of Brunswick County by this subsection shall be the judgeship currently held by Judge Barefoot, who resides in Brunswick County. Those judges' successors shall be elected for four-year terms in the 2008 general election. Candidates for the remaining judgeships in District 13 may be residents of any county within the district."

SECTION 2. This act becomes effective August 1, 2006, or the date upon which this act is approved under section 5 of the Voting Rights Act of 1965, whichever is later.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1048

Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1048-CSRK-40 [v.34]

6/22/2006 8:21:31 AM

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(7b) "Keg" means a portable container designed to hold and dispense in excess of eight gallons of malt beverage."

SECTION 2. Chapter 18B is amended by adding a new section to read:

"**G.S. 18B-403.1. Purchase-Transportation Permit for Keg or Kegs of Malt Beverages.**

(a) Purchase-transportation. A person who is not a permittee may purchase and transport for off-premises consumption a keg or kegs as defined in G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a purchase-transportation permit according to this section is a violation of 18B-303(b).

(b) Issuance. A person holding a permit pursuant to 18B-1001(2) may issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser. A copy of the purchase-transportation permit shall be maintained by the permittee for 30 days.

(c) Form. A purchase-transportation permit shall be issued on a printed form adopted and provided by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(d) Restrictions on Permit. A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the by the purchaser, and one by the permittee from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request.

(e) Violation. The first violation of this section shall result in a warning to the permittee."

SECTION 2A. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~ beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg or kegs of malt beverages for off-premises consumption, the permit required by G.S. 18B-403.1(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~ kegs for on-premise consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 3. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking Stations and Roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

(2) ~~Designates~~Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. The ~~plan~~ pattern need not be in writing and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test~~ to produce drivers license, registration and insurance information.

(3) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an

alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.1. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.2. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical

professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.3. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"**§ 20-38.4. Facilities.**

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county or the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the above functions listed in subdivisions (a)(1) and (a)(2) of this section.

"**§ 20-38.5. Motions and district court procedure.**

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.6. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the

findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions, and if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 5. Article 7 of Chapter 8C of the General Statutes is amended by adding a new rule of evidence to read:

"**Rule 707. Drug recognition expert and HGN testimony and opinion as to speed of an accident reconstruction expert.**

(a) Results of Horizontal Gaze Nystagmus (HGN) Test. – The results of a horizontal gaze nystagmus (HGN) test are admissible into evidence, and the opinion of the analyst is admissible as to whether the results are consistent with a chemical analysis or consistent with a person who is under the influence of a particular type or class of impairing substances, when the HGN test is administered by a person who has successfully completed training in HGN.

(b) Opinion of Drug Recognition Expert (DRE). – The opinion of a DRE that a person is under the influence of one or more impairing substances, and the opinion as to the category of such impairing substance or substances is admissible in any court or administrative hearing when the DRE holds a current certification as a DRE issued by the Department of Health and Human Services.

(c) Opinion as to Speed of a Vehicle. – Any person who is found by a court to be an expert in accident reconstruction who has performed a reconstruction of a crash or has reviewed the report of investigation may give an opinion as to the speed of a vehicle even if the expert did not actually observe the vehicle moving.

Nothing contained in this Rule shall be construed to prohibit cross-examination of any person as to their opinions and the basis for the opinions and shall not limit other opinion testimony otherwise admissible under the rules of evidence or court decision."

PART V. ALCOHOL SCREENING DEVICES

SECTION 6. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or

b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, and is admissible in a court, or an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~ results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 7. 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:

. . .

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

. . .

(45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada.~~ a province of Canada, or the Sovereign Nation of the Eastern Band of

the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina.

. . . ."

SECTION 8. G.S. 20-138.1(a) reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle.

SECTION 9. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The

results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I or II controlled substance, as listed in G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

. . . ."

SECTION 10. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an

administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section ~~is a Class 2 misdemeanor.~~ shall be punished pursuant to G.S. 20-179. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

(c1) Notwithstanding any other provision of law, if a person either pleads or is found guilty of a violation of this section, a court may, with the defendant's consent (i) withhold entry of judgment and defer further proceedings, and (ii) place the defendant on probation for a minimum of one year upon such reasonable terms and conditions as it may require. Action may only be taken under this subsection if all of the following conditions are met:

(1) The defendant has no pending charges under Chapters 18B, 20, 14, or 90 of the General Statutes.

(2) The defendant has no prior convictions for a violation of this section or of Chapter 18B of the General Statues.

(3) The defendant has no prior convictions for an offense involving impaired driving under any federal or other States' statutes relating to the substances or paraphenelia listed in Articles 5, 5A, or 5B of Chapter 90 of the General Statues.

(c2) Notwithstanding any other provision of law, a court shall impose, at a minimum, all of the terms and conditions listed in this subsection for any defendant placed on probation pursuant to subsection (c1) of this section. The defendant shall:

(1) Obtain a substance abuse assessment within 30 days and comply with education or treatment requirements recommended by the assessment.

(2) Not operate a motor vehicle for at least 90 days.

(3) Perform 50 hours of community service and pay the community service fee.

(4) Submit at reasonable times to warrantless searches by a probation officer of his or her person, vehicle, and premises including drug and alcohol screening and testing and pay the costs of such screening and tests.

(5) Not possess or consume any alcoholic beverage or controlled substance unless the controlled substance is lawfully prescribed to the person.

(6) Pay court costs and all fees.

(7) Not violate any law of this or any other state or the federal government.

(8) Remain gainfully employed or in school as a full-time student as determined by the probation officer.

(9) Not violate any other reasonable condition of probation.

Upon violation of any term or condition of probation ordered pursuant to subsection (c1), or of this subsection, the court may enter an adjudication of guilt and proceed as otherwise provided.

(c3) Upon fulfillment of the terms and conditions of probation ordered under subsections (c1) or (c2) of this section, the court shall discharge the defendant and dismiss the proceedings against him if all of the following conditions are met:

(1) The defendant does not have any pending charges for violating any law of this State.

(2) The defendant has not violated any laws of this State, including infractions.

(3) The defendant has not been convicted of violating any federal or other States' statutes that are substantially similar to provisions in Chapters 18B, 20, 14, or 90 of the General Statutes.

Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions.

(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20 179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20 179.3, other than the requirement in G.S. 20 179.3(b)(1)c. G.S. 20 179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20 179.3 shall apply. G.S. 20 179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

SECTION 11. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 12. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 13. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if ~~he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a1)(2) is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if ~~he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) the commission of the offense in subdivision (a2)(2) is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) the commission of the offense in subdivision (a3)(2) is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if

(1) the person unintentionally causes serious injury to another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a4)(2) is the proximate cause of the serious injury, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if

(1) the person unintentionally causes the death of another person,

(2) the person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) the commission of the offense in subdivision (a5)(2) is the proximate cause of the death, and

(4) the person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5), and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW

SECTION 14. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more, ~~0.04~~ 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

(5) ~~The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures,~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person is notified of his or her~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement ~~officer,~~ officer or chemical analyst, ~~in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and either may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~ officer ~~must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging~~ officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~ officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~

shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months. effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections,

the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20 138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20 179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20 179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A 133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A 41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20 17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20 139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 15. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. -- ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if~~ Preventive ~~Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as~~

~~proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the type of analyses that they can perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the ~~charging~~ law enforcement officer's request

for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses.

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains

alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having

custody of the person shall allow the person access to a telephone to attempt to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d)(1) by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing

or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol

under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 16. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 17. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 18. G.S. 20-138.4 reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.**

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum,

(1) The alcohol concentration or the fact that the driver refused.

(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.

(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records,

(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.

(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.

(6) The name and agency of the charging officer and whether the officer is available.

(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 19.1. G.S. 7A-109.2 reads as rewritten:

"§ 7A-109.2. Records of dispositions in criminal ~~cases.~~cases; impaired driving integrated data system.

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;

(2) The reasons for any pretrial dismissal by the court;

(3) The reasons for any continuances granted in the case;

(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;

(5) The reasons for any suppression of evidence;

(6) The reasons for dismissal of charges at trial;

(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;

(8) The amount and reason for waiving or reduction of any fee or fine;

(9) The time or other conditions given to pay any fine, cost, or fees;

(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;

(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and

(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees.

SECTION 19.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-346.3. Impaired driving integrated data system report.

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State, by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction,

amount collected and amount still owed,, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR.

SECTION 20. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notices. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 21. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional

period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~ year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) the person violates any condition of the restoration;

(2) the person is convicted of any moving offense in this or another state;

(3) the person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

SECTION 21A. G.S. 20-17(a)(2) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(2) Impaired driving under G.S. 20-138.1. ~~Either of the following impaired driving offenses:~~

~~a. Impaired driving under G.S. 20-138.1.~~

~~b. Impaired driving under G.S. 20-138.2.~~"

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 22. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence

appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of the subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating Factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the Jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the

jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury Selection. -- A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court

(1) Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant Pleads Guilty to the Charge Only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. -- At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed

below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.'

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he ~~must~~ shall note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he ~~must~~ shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

~~(3) Not operate a motor vehicle for a term of 60 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

~~(3) Not operate a motor vehicle for a term of 30 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided

such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor ~~by the greater weight of the evidence,~~ beyond a reasonable doubt, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment,

and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment or ~~community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (s)(2), the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on

weekends if the court determines that, at the time of his entrance to the jail, if

(i) the defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

(ii) the defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts."

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 23. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 24. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 25. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or.

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

. . .

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year old. A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8) or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 26. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 27. G.S. 18B-1003(c) reads as rewritten:

(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;

(3) Convicted of an alcoholic beverage offense within two years; or

(4) Convicted of a misdemeanor controlled substances offense within two years.

(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 28. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judges shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 29. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;

2. Before the judge who presided at trial;

3. Before the end of the session if made in superior court; and

4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must

provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in District Court without the signature of the District Attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the District Attorney's signature 10 business days after the District Attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

SECTION 29A. G.S. 7A-304 is amended by adding a new subsection to read:

"(f) A person charged for any of the offenses set forth in this subsection may, in lieu of the payment of fines or the making of court appearances, elect to provide proof of compliance to the district attorney prior to or on the scheduled court appearance date, and the district attorney may in turn agree to voluntarily dismiss the case in exchange for the person's signed waiver of appearance and payment of court costs in the sum of fifty dollars ($50.00). Court costs assessed under this subsection are for the support of the General Court of Justice and shall be remitted to the State Treasurer.

Compliance dismissals authorized by this subsection may be obtained only for the following offenses:

(1) No operator's license, in violation of G.S. 20-7(a).

(2) Driving while license revoked, not alcohol-related, in violation of G.S. 20-28.

(3) Registration violations under G.S. 20-111(1) though (3).

(4) Failure to notify the Division of Motor Vehicles of change of address in violation of G.S. 20-7.1.

(5) Expired license, in violation of G.S. 20-7.

(6) Unsafe tires, in violation of G.S. 20-122.1.

(7) Inspection violations under G.S. 20-183.2.

(8) No registration card, in violation of G.S. 20-111.

(9) Failure to comply with license restrictions, in violation of G.S. 20-179.3.

(10) Failure to obtain commercial drivers license, in violation of G.S. 20-37.12.

(11) Allowing unlicensed person to drive, in violation of G.S. 20-32.

(12) Failure to notify the Division of Motor Vehicles of change of address registration, in violation of G.S. 20-67.

(13) Rearview mirror violations under G.S. 20-117.1(a).

(14) Safety equipment violations under G.S. 20-123.2, 20-124, 20-125, 20-125.1, 20-126, 20-127, 20-128, 20-128.1, 20-129, and 20-129.1.

(15) Child restraint violations under G.S. 20-137.1.

(16) Motorcycle and moped helmet violations under G.S. 20-140.4(2).

(17) Any violation arising from a vehicular accident or collision in which a citation is issued, but which in the interests of justice the State elects to accept a compliance dismissal rather than prosecute.

For purposes of this section, "compliance" means proof satisfactory to the district attorney that the person has corrected the violation and is therefore in compliance with the applicable statute, or that the underlying condition which gave rise to the violation is no longer present. However, a compliance dismissal shall not be valid in any case in which the person's compliance, if presented to the court, would qualify for a statutory defense to the charge, such as those defenses contained in G.S. 20-35(c), 20-122.1(b), 20-127(e), 20-133(b), and 20-137.1(c). Nothing in this subsection shall limit the discretion of the District Attorney to otherwise dismiss a charge."

SECTION 29B. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is ~~dismissed.~~dismissed, except as provided in subsection (f) of this section.

. . . ."

PART XIX. EFFECTIVE DATE

SECTION 30. Sections 18, 19.1, and 19.2 become effective upon the effective date of the next rewrite of the superior court clerks system by the Administrative Office of the Courts. Sections 29A and 29B are effective October 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

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

H1048-ARK-58 [v.1]

Date 6-22 .2006

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

RAND

moves to amend the bill on page 25, line 1, by rewriting that line to read:

"custody of the person shall make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. #2
(to be filled in by
Principal Clerk)

H1048-ASA-34 [v.1]

Date 6-22 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1048-CSRK-40 [v.27]

Senator Nesbitt

moves to amend the bill on page 43, line 17-18
by inserting new sections to read:

"**SECTION ___.** G.S.20-17.8(b) reads as rewritten:

'(b) Ignition Interlock Required. – ~~When~~ Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.'

SECTION ___. G.S. 20-17.8 is amended by adding a new subsection to read:

'(l) Medical Exception to Requirement. – A person subject to this section who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system, may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1048-ASA-34 [v.1]

interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4).'

SIGNED Martin Nesbitt
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. #3
(to be filled in by Principal Clerk)

H1048-ARK-52 [v.1]

Date 6-22 ,2006

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

RAND

moves to amend the bill on page [redacted], lines _____ through ____, by rewriting those lines to read:

SECTION 5. G.S. 8C-702 reads as rewritten:

"**Rule 702. Testimony by experts.**

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion.

(a1) In an impaired driving action under Chapter 20 of the General Statutes, a witness, qualified under subsection (a) of this section and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:

(1) The results of a Horizontal Gaze Nystagmus (HGN) Test.

(2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. Only a witness who holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.

. . .

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. #3
(to be filled in by
Principal Clerk)

H1048-ARK-52 [v.1]

(i) A witness qualified as an expert in accident reconstruction who has performed a reconstruction of a crash, or has reviewed the report of investigation, with proper foundation may give an opinion as to the speed of a vehicle even if the witness did not observe the vehicle moving."

DESCRIBE TYPE OF TRAING TO QUALIFY ON HGN

SIGNED Tony Rad
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

H1048-ASA-33 [v.1]

Date 6-22-06 ,2006

Comm. Sub. [YES]
Amends Title [YES]
H1048-CSRK-40 [v.27]

Senator Nesbitt

moves to amend the bill on page 11, line 19-20
by inserting a new section to read:

"**SECTION 9A.** G.S. 20-17(a)(2) reads as rewritten:

'(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(2) Impaired driving under G.S. 20-138.1. ~~Either of the following impaired driving offenses:~~

~~a. Impaired driving under G.S. 20-138.1.~~

~~b. Impaired driving under G.S. 20-138.2.~~'

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED Withdrawn TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. #5
(to be filled in by Principal Clerk)

H1048-ASA-36 [v.1]

Date 6-22 ,2006

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

Senator Rand

moves to amend the bill on page 47, line 15
by inserting a new section to read:

"**SECTION .** Chapter 162 of the General Statutes is amended by adding a new section to read:

'**§ 162-62. Legal status of prisoners.**

(a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite jail/work release unit, the administrator or other person in charge of the facility shall make a reasonable effort to determine the nationality of the person so confined.

(b) If the prisoner is a foreign national, the administrator or other person in charge of the facility holding the prisoner shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that the prisoner's lawful status has not expired. If verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be ~~made~~ ATTEMPTED within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the LESC or other office or agency determines that the prisoner has not been lawfully admitted to the United States, the administrator or other person in charge of the facility holding the prisoner shall notify the United States Department of Homeland Security.

(c) Nothing in this section shall be construed to deny bond to a person or to prevent a person from being released from confinement when that person is otherwise eligible for release.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. #5
(to be filled in by
Principal Clerk)

H1048-ASA-36 [v.1]

(d) The Department of Crime Control and Public Safety, after consultation with the North Carolina Sheriffs' Association, shall prepare and issue guidelines and procedures to be used to comply with the provisions of this section."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. # 6
(to be filled in by Principal Clerk)

H1048-ARK-57 [v.1]

Date 6-22 ,2006

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

Senator Nesbitt

moves to amend the bill on page 9,

by rewriting lines 12 through 14 to read: "prove a person's alcohol concentration.",

by rewriting lines 20 through 23 to read: "charge under this section.";

And further moves to amend the bill on page 10,

By rewriting lines 2 through 4 to read: "prove a person's alcohol concentration.", and

By rewriting lines 17 through 20 to read: "charge under this section.".

SIGNED Mark Nesbitt
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. #7
(to be filled in by
Principal Clerk)

H1048-ASA-35 [v.1]

Date 6-22 ,2006

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

Senator Nesbitt

moves to amend the bill on page ____, line ____
by inserting a new section to read:

"**SECTION .** G.S. 20-138.3(c) reads as rewritten:

'(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section is a ~~Class 2 misdemeanor.~~Class 3 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

WITHDRAWN

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1048 DATE 6-22-06

S. B. No. _____ Amendment No. #8

COMMITTEE SUBSTITUTE H1048-CSRK-40 [v.34] (to be filed in by Principal Clerk)

Rep.) BERGER

Sen.)

AMENDMENT # 3 BY AMENDING THE AMENDMENT ON

moves to amend ~~the bill~~ on page 1, lines 16+17

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINES TO READ:

"SUBSTANCES, AND THE CATEGORY OF SUCH IMPAIRING SUBSTANCE OR SUBSTANCES. A WITNESS WHO HOLDS A CURRENT CERTIFICATION AND HAS RECEIVED TRAINING AS A DRUG RECOGNITION EXPERT, ISSUED BY THE STATE".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-22-06 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Kristin Kelly	gov. office
Bryan Ball	Fiscal Research
Andy Ellen	[illegible]
Vanderpuitt Univ	Paula Wolf
Rebekah Goncalves	ACLU-NC
Freddie Zufelt	Smith Anderson
Isaac Linnartz	Smith Anderson
Dana Sipsa	Smith Anderson
Steve Keene	NC Med Society
Ken Howell	Gov's office
Paige Hale	Gov's Office

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-22-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
EDDIE · BUFFALOE	NCDHHS
Al Cisele	DHHS
Paul Gloven	DHHS
Jennifer Epperson	Governor's Office
Mildred Spearmen	NCDOC
Cathy Matthews	DMV
Matt Osborne	AOC
Jann Fitzgerald	NCFPC
TROY PAGE	N.C. SENTENCING COMMISSION
Elizabeth Dalton	NCRMA
SUSANNE STEER	NCRA

Principal Clerk ____
Reading Clerk ____

REVISED: SB-1990 & SB1991 ADDED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 22, 2006	1:00 PM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1048	Governor's DWI Task Force Recommendations.	Representative Hackney
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1844	Executive Branch Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1846	Contribution Changes.	Representative Ross Representative Hackney Representative Howard Representative Eddins
SB 1694	State Government Ethics Act.	Senator Rand
SB 1990	Divide Superior Court District 13.	Senator Soles, Jr.
SB 1991	District 13 County Resident Judgeships.	Senator Soles, Jr.

Judiciary 1 Committee

June 22, 2006 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 1:03 p.m. with fourteen members present.

HB-1048 (Governor's DWI Task Force Recommendations) Committee Substitute from the 10:00 a.m. meeting was brought back before the Committee for continued discussion, and Amendments. Senator Martin Nesbitt offered Amendment #9 on page 10, line 24, through page 12, line 35 (See attached Amendment) Staff attorney, Hal Pell explained the changes. Senator's R.C. Soles and Phillip Berger had questions. Mr. Pell answered the questions. Senator Nesbitt moved for adoption of the Amendment. All members voted yes. Motion carried. Senator Vernon Malone offered Amendment #10 on page 2, lines 28 & 29, and page 2/ lines 35 & 36. (See attached Amendment) Mr. Pell explained changes. Senator's Soles had a question. Mr. Pell answered the question. Mr. Dick Taylor from NC Academy of Trial Lawyers, spoke on the bill, and answered the question. Senator Jeanne Lucas had a question regarding language in the Amendment. Senator Malone withdrew the Amendment. (See attached Amendment). Senator Pete Brunstetter offered Amendment #11 on page 9, line 13, page 9, and lines 20 through 23, and page 10, line 3, page 10, lines 17-20. (See attached Amendment). Senator Jeanne Lucas offered a Perfection Amendment to Senator Brunstetter's Amendment. Senator Brunstetter then offered a Substitute Amendment. Senator's Lucas, Brock and Rand had questions. The questions were answered by Mr. Pell. Senator Clodfelter called for a vote. There was a majority vote on the Amendment as perfected. Amendment was adopted. Senator Vernon Malone offered Amendment #12. (See attached Amendment). Senator Janet Cowell offered a Perfection Amendment to Senator Malone's Amendment, and asked for adoption of the Amendment as perfected. All members voted yes. Motion carried. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 2:15 p.m.

Senator Dan Clodfelter, Chair **Wanda Joyner, Committee Assistant**

SENATE
COMMITTE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA JUN 30 2006

SESSION 2005

H

ADOPTED 5

HOUSE BILL 1048

Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
Senate Judiciary I Committee Substitute Adopted 6/27/06
~~**PROPOSED SENATE COMMITTEE SUBSTITUTE H1048-PCS30617-SV-89**~~
Senate Finance Committee Substitute Adopted 6/30/06

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE: (1) IMPROVED DETECTION OF IMPAIRED DRIVERS ON THE STATE'S ROADS AND HIGHWAYS; (2) IMPROVED METHODS OF DETERMINING HOW UNDERAGE DRIVERS OBTAIN ALCOHOL; (3) PROCEDURES FOR INVESTIGATING, ARRESTING, CHARGING, AND JUDICIAL PROCESSING OF IMPAIRED DRIVING OFFENSES; (4) RULES FOR THE COURTROOM ADMISSION OF EVIDENCE THAT IS RELEVANT TO IMPAIRED DRIVING OFFENSES; (5) CLARIFICATION ON WHEN A DRIVER IS GUILTY OF DRIVING WHILE IMPAIRED; (6) AGGRAVATED PENALTIES FOR OFFENDERS WHO SERIOUSLY INJURE OR KILL WHEN DRIVING WHILE IMPAIRED; (7) A SYSTEM OF REPORTING BY STATE PROSECUTORS AND THE COURTS ON THE DISPOSITION OF IMPAIRED DRIVING OFFENSES; (8) ELECTRONIC MONITORING AFTER AN IMPAIRED DRIVER HAS BEEN RELEASED FROM CONFINEMENT; (9) PROCEDURES TO DETERMINE IF IMPAIRED DRIVERS WHO ARE FOREIGN NATIONALS ARE LAWFULLY IN THE UNITED STATES; (10) OTHER MEASURES DESIGNED TO IMPROVE THE SAFETY OF THE MOTORING PUBLIC OF NORTH CAROLINA; AND TO PROVIDE THAT THE ACT SHALL BE KNOWN AS THE "MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006."

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as "THE MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006".

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 2. G.S. 18B-101 is amended by adding a new subdivision to read:

"(7b) "Keg" means a portable container designed to hold and dispense in excess of eight gallons of malt beverage."

SECTION 3.1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-403.1. Purchase-transportation permit for keg or kegs of malt beverages.**

(a) Purchase-Transportation. – A person who is not a permittee may purchase and transport for off-premises consumption a keg or kegs as defined in G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a purchase-transportation permit according to this section is a violation of G.S. 18B-303(b).

(b) Issuance. – A person holding a permit pursuant to G.S. 18B-1001(2) may issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser. A copy of the purchase-transportation permit shall be maintained by the permittee for 30 days.

(c) Form. – A purchase-transportation permit shall be issued on a printed form adopted and provided by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(d) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the purchaser and one by the permittee from whom the purchase is made. The purchaser shall display his copy of the permit to any law enforcement officer upon request.

(e) Violation. – The first violation of this section shall result in a warning to the permittee."

SECTION 3.2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~ beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg or kegs of malt beverages for off-premises consumption, the permit required by G.S. 18B-403.1(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~ kegs for on-premise consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 4. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking stations and roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

~~Designates~~Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. ~~The plan~~

Operate under a written policy that provides guidelines for the pattern. The policy may be either the agency's own policy, or the policy of another law enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, ~~which~~ driver is requested ~~to submit to an alcohol screening test.~~ to produce drivers license, registration, and insurance information. If officers of a law enforcement agency are operating under another agency's policy, it must be stated in writing.

~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to~~

~~screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38.1. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.2. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.3. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.4. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"**§ 20-38.5. Facilities.**

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section.

"**§ 20-38.6. Motions and district court procedure.**

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.7. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions and, if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 6. G.S. 8C-702 reads as rewritten:

"**Rule 702. Testimony by experts.**

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion.

(a1) In an impaired driving action under Chapter 20 of the General Statutes, a witness, qualified under subsection (a) of this section and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:

(1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.

(2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.

...

(i) A witness qualified as an expert in accident reconstruction who has performed a reconstruction of a crash, or has reviewed the report of investigation, with proper foundation may give an opinion as to the speed of a vehicle even if the witness did not observe the vehicle moving."

PART V. ALCOHOL SCREENING DEVICES

SECTION 7. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or

b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and

approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~ results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 8. 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:

...

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

...

(45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada.~~ a province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina.

..."

SECTION 9. G.S. 20-138.1 reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle."

SECTION 10. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, the testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

..."

SECTION 11.1. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section is a ~~Class 2~~ Class 3 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

~~(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:~~

~~(1) Is 18, 19, or 20 years old on the date of the offense.~~

~~(2) Has not previously been convicted of a violation of this section.~~

~~The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided~~

~~for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.~~"

SECTION 11.2. G.S. 20-13.2 reads as rewritten:

"**§ 20-13.2. Grounds for revoking provisional license.**

(a) The Division ~~must~~must, upon receipt of a record of the licensee's conviction, revoke the license of a person who is convicted of violating the provisions of G.S. 20-138.3 and who was under 18 years of age at the time of the offense.~~upon receipt of a record of the licensee's conviction.~~

(b) If a person is convicted of an offense involving impaired driving and was less than 18 years of age at the time of the offense, then ~~offense occurs while he is less than 21 years old,~~ his license must be revoked under this section in addition to any other revocation required or authorized by law.

(c) If a person less than 18 years of age willfully refuses to submit to a chemical analysis pursuant to ~~G.S. 20-16.2 while he is less than 21 years old,~~ G.S. 20-16.2, then his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal.

...."

SECTION 12. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 13. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 14. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle ~~if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle ~~if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury, and

(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and

(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5) of this section, and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED-CONSENT LAW

SECTION 15. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12 month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more,

0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

(5) ~~The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures,~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person~~ you ~~is~~ are notified ~~of his or her~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement ~~officer,~~ officer or chemical analyst ~~in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that

chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~ officer ~~must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging~~ officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~ officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~ shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or

both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or~~

~~set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and

G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 16. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing

substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if~~ Preventive ~~Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical

analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. – ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses ~~of~~ the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. – In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock~~

~~solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath-testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the types of analyses that they can perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the ~~charging~~ law enforcement officer's request for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the~~

~~person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. – The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in

juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of ~~Health~~ and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d1) of this section by a law enforcement officer, a

physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 17. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 18. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 19. G.S. 20-138.4 reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.**

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or
(2) Accepts a plea of guilty or no contest to a lesser included offense; or
(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or
(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum:

(1) The alcohol concentration or the fact that the driver refused.
(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.
(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records.
(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.
(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.
(6) The name and agency of the charging officer and whether the officer is available.
(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) of this section shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 20.1. G.S. 7A-109.2 reads as rewritten:

"**§ 7A-109.2. Records of dispositions in criminal ~~cases.~~cases; impaired driving integrated data system.**

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) of this section for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;
(2) The reasons for any pretrial dismissal by the court;
(3) The reasons for any continuances granted in the case;
(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;
(5) The reasons for any suppression of evidence;
(6) The reasons for dismissal of charges at trial;
(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;
(8) The amount and reason for waiving or reduction of any fee or fine;
(9) The time or other conditions given to pay any fine, cost, or fees;
(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;
(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and
(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees."

SECTION 20.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-346.3. Impaired driving integrated data system report.**

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction, amount collected, and the amount still owed, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR

SECTION 21. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of

giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notice. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 22.1. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the

period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied-consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~ year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12~~

~~months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) The person violates any condition of the restoration;

(2) The person is convicted of any moving offense in this or another state;

(3) The person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

SECTION 22.2. G.S. 20-17(a)(2) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(2) Impaired driving under G.S. 20-138.1. ~~Either of the following impaired driving offenses:~~

~~a. Impaired driving under G.S. 20-138.1.~~

~~b. Impaired driving under G.S. 20-138.2.~~"

SECTION 22.3. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. – ~~When~~ Except as provided in subdivision (1) of this subsection, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2,

(ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 22.4. G.S. 20-17.8 is amended by adding a new subsection to read:

"(l) Medical Exception to Requirement. – A person subject to this section who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4)."

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 23. G.S. 20-179 reads as rewritten:

"§ **20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court,

the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury selection. – A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial ~~on~~ Aggravating Factors in Superior Court. –

(1) Defendant admits aggravating factor only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant pleads guilty to the charge only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, ~~he must~~ the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, ~~he must~~ the judge shall note in the judgment any factors found and ~~his~~the finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, ~~he must~~ the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum

term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

~~(3) Not operate a motor vehicle for a term of 60 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

~~(3) Not operate a motor vehicle for a term of 30 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear

the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor ~~by the greater weight of the evidence,~~ beyond a reasonable doubt, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment ~~or community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled

substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (2) of this subsection, the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail, if

a. The defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

b. The defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts.

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 24. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 25. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 26. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption. – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

...

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year Old. – A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8), or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 27. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.
(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.
(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.
(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.
(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.
(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.
(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.
(10) Promptly notify the parole officer of any change in address or employment.
(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.
(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.
(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.
(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.
(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in

the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 28. G.S. 18B-1003(c) reads as rewritten:

"(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;

(3) Convicted of an alcoholic beverage offense within two years; or

(4) Convicted of a misdemeanor controlled substances offense within two years.

(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 29. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judge shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 30.1. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;

2. Before the judge who presided at trial;

3. Before the end of the session if made in superior court; and

4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a

notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

SECTION 30.2. G.S. 7A-304 is amended by adding a new subsection to read:

"(f) A person charged for any of the offenses set forth in this subsection may, in lieu of the payment of fines or the making of court appearances, elect to provide proof of compliance to the district attorney prior to or on the scheduled court appearance date, and the district attorney may in turn agree to voluntarily dismiss the case in exchange for the person's signed waiver of appearance and payment of court costs in the sum of fifty dollars ($50.00). Court costs assessed under this subsection are for the support of the General Court of Justice and shall be remitted to the State Treasurer.

Compliance dismissals authorized by this subsection may be obtained only for the following offenses:

(1) No operator's license, in violation of G.S. 20-7(a).

(2) Driving while license revoked, not alcohol-related, in violation of G.S. 20-28.

(3) Registration violations under G.S. 20-111(1) though (3).

(4) Failure to notify the Division of Motor Vehicles of change of address in violation of G.S. 20-7.1.

(5) Expired license, in violation of G.S. 20-7.

(6) Unsafe tires, in violation of G.S. 20-122.1.

(7) Inspection violations under G.S. 20-183.2.

(8) No registration card, in violation of G.S. 20-111.

(9) Failure to comply with license restrictions, in violation of G.S. 20-179.3.

(10) Failure to obtain commercial drivers license, in violation of G.S. 20-37.12.

(11) Allowing unlicensed person to drive, in violation of G.S. 20-32.

(12) Failure to notify the Division of Motor Vehicles of change of address registration, in violation of G.S. 20-67.
(13) Rearview mirror violations under G.S. 20-117.1(a).
(14) Safety equipment violations under G.S. 20-123.2, 20-124, 20-125, 20-125.1, 20-126, 20-127, 20-128, 20-128.1, 20-129, and 20-129.1.
(15) Child restraint violations under G.S. 20-137.1.
(16) Motorcycle and moped helmet violations under G.S. 20-140.4(2).
(17) Any violation arising from a vehicular accident or collision in which a citation is issued, but which in the interests of justice the State elects to accept a compliance dismissal rather than prosecute.

For purposes of this section, "compliance" means proof satisfactory to the district attorney that the person has corrected the violation and is therefore in compliance with the applicable statute, or that the underlying condition which gave rise to the violation is no longer present. However, a compliance dismissal shall not be valid in any case in which the person's compliance, if presented to the court, would qualify for a statutory defense to the charge, such as those defenses contained in G.S. 20-35(c), 20-122.1(b), 20-127(e), 20-133(b), and 20-137.1(c). Nothing in this subsection shall limit the discretion of the district attorney to otherwise dismiss a charge."

SECTION 30.3. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is ~~dismissed.~~dismissed, except as provided in subsection (f) of this section.

..."

SECTION 31. Chapter 162 of the General Statutes is amended by adding a new section to read:

"**§ 162-62. Legal status of prisoners.**

(a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite jail/work release unit, the administrator or other person in charge of the facility shall make a reasonable effort to determine the nationality of the person so confined.

(b) If the prisoner is a foreign national, the administrator or other person in charge of the facility holding the prisoner shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that the prisoner's lawful status has not expired. If verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be attempted within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the LESC or other office or agency determines that the prisoner has not been lawfully admitted to the

United States, the administrator or other person in charge of the facility holding the prisoner shall notify the United States Department of Homeland Security.

(c) Nothing in this section shall be construed to deny bond to a person or to prevent a person from being released from confinement when that person is otherwise eligible for release.

(d) The Department of Crime Control and Public Safety, after consultation with the North Carolina Sheriffs' Association, shall prepare and issue guidelines and procedures to be used to comply with the provisions of this section."

PART XIX. EFFECTIVE DATE

SECTION 32. Sections 19, 20.1, and 20.2 of this act become effective upon the effective date of the next rewrite of the superior court clerks system by the Administrative Office of the Courts. Sections 30.2 and 30.3 become effective October 1, 2006, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. #9
(to be filled in by
Principal Clerk)

H1048-ARK-59 [v.1]

Date 6-22 ,2006

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

Senator Nesbitt

moves to amend the bill on page 10, line 24, through page 12, line 35, by rewriting the lines to read:

SECTION 10. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No

alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section is a ~~Class 2~~ Class 3 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

~~(d) Limited Driving Privilege. A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:~~

~~(1) Is 18, 19, or 20 years old on the date of the offense.~~

~~(2) Has not previously been convicted of a violation of this section.~~

~~The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."~~

SECTION 10A. G.S. 20-13(a) reads as rewritten:

"**§ 20-13.2. Grounds for revoking provisional license.**

(a) The Division must revoke the license of a person under 18 years of age who is convicted of violating the provisions of G.S. 20-138.3 upon receipt of a record of the licensee's conviction."

AT TIME OF THE OFFENSE

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. #9
(to be filled in by
Principal Clerk)

H1048-ARK-59 [v.1]

SIGNED Martha Nesbitt
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-22-06

S. B. No. _____ Amendment No. #10
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) V. Malone
Sen.)

moves to amend the bill on page 2, line 28 – 29

( ) WHICH CHANGES THE TITLE

by ~~[illegible]~~ rewriting the lines to read:

information.

(2a) LAW ENFORCEMENT OFFICERS SHALL OPERATE UNDER A WRITTEN POLICY THAT PROVIDES THE PATTERN, EITHER THEIR OWN AGENCY'S POLICY, OR THE POLICY OF ANOTHER LAW ENFORCEMENT AGENCY. THE PATTERN ITSELF NEED NOT BE IN WRITING, ~~THE [illegible] THE PLAN~~ AND MAY",

AND ON PAGE 2, BETWEEN LINES 35 AND 36, BY INSERTING THE FOLLOWING:

(2b) IF A LAW ENFORCEMENT AGENCY'S OFFICERS ARE OPERATING UNDER ANOTHER AGENCY'S POLICY, IT MUST BE STATED IN WRITING.

SIGNED _____

WITHDRAWN

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1048 DATE 6-22-06

S. B. No. _____ Amendment No. #11 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE N1048-CSRK-40 [V.3]

Rep.) BRUNSTETTER
Sen.)

moves to amend the bill on page 9, line 13 AND PAGE 10, LINE 3

( ) WHICH CHANGES THE TITLE

by DELETING "OR II"; AND

AND PAGE 10, LINES 17-20

ON PAGE 9, LINES 20 THROUGH 23, BY

REWRITING THE LINES TO READ:

"CHARGE UNDER THIS SECTION."}

~~AND~~

SIGNED _____

13-0

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1048 DATE 6-22-06

S. B. No. _____ Amendment No. #12
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1048-CSRK-~~40~~ [v34]

Rep.)
) Malone
Sen.)

moves to amend the bill on page 2, line(s) 28-29

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read: information

(2a) LAW ENFORCEMENT OFFICERS SHALL OPERATE UNDER A WRITTEN POLICY THAT PROVIDES GUIDELINES FOR THE PATTERN. THIS POLICY MAY BE EITHER THEIR OWN AGENCY'S POLICY, OR THE POLICY OF ANOTHER LAW ENFORCEMENT AGENCY. ~~THE PATTERN FOR A SPECIFIC STOP NEED NOT BE IN WRITING IF IT CONFORMS TO THE GUIDELINES STATED IN THE POLICY.~~

PERFECTING AMENDMENT ADOPTED

AND ON PAGE 2, BETWEEN LINES 35 & 36, BY INSERTING:

(2b) IF ~~LAW ENFORCEMENT~~ OFFICERS OF A LAW ENFORCEMENT AGENCY ARE OPERATING UNDER ANOTHER AGENCY'S POLICY, IT MUST BE STATED IN WRITING.

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-22-06 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
[illegible] Travick	Don Beason Trainee
[illegible]	NCATL
Holly Bryan	NCATL
Dick Taylor	NCATL
Kimberly N Overton	Conference of DA's
Peg Dorer	Conference of DAs
Jim Keith	DA 21st Dist
Mark Beeson	Beeson Gov't Affairs
[illegible]	Alcohol Breath Testing US, LLC
Jim Drennan	I.O.G.
Kathleen Edwards	UNC-CH Daily Bulletin

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-22-06 10:00 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Julie Wilder	Sanford Black is NPA
Joyce Peters	HPDESRC
Chad Hinton	Civitas Institute
Fred A. Rush Jr	NC Dept. of Secretary of State
David Crawford	AIA NC
WPP	NCATL
Louisa Warren	NC CLR

Judiciary 1 Committee

June 27, 2006 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with seventeen members present. He introduced Pages; Nelia Hamby, from Kannapolis, NC, Robert Gmeiner, from Yadkenville, NC, Jasmine Brooks and Shannon Brooks, from Knightdale, NC and Elise Bohmer, from Yanceyville, NC.

HB-126 (Gun Permit/OSHA Technical Changes, Committee Substitute was introduced by Senator Clodfelter. Senator Richard Stevens moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Walker Reagan explained that that the bill would make time-sensitive technical changes to the pisto! permit and concealed handgun permit statutes to conform to federal law and the OSHA civil penalties statute. (See Bill Summary for further information) Senator Martin Nesbitt and Senator David Hoyle had questions. Staff attorney, Hal Pell answered the questions. Senator Nesbitt moved for a Favorable Report. All members voted yes. Motion carried

HB-1846 (2006 Campaign Finance Changes, Committee Substitute) was introduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Representative Deborah Ross explained that the bill drops the thresholds for both accepting contributions in cash and for reporting the identity of a contributor from One hundred dollars to fifty dollars. It clarifies that the fifty dollars identity reporting threshold is measured per election cycle. It prohibits the use of contribution checks and other instruments in which the payee blank is not filled in with the intended recipient of the contributor's choice. It adds a penalty for accepting contributions from certain sources that are prohibited from making contributions. It bars prosecution if a campaign treasurer uses the "best efforts" prescribed by the State Board of Elections to obtain the required information. It requires treasurers to take training within three months of taking the office and every four years thereafter. (See attached Bill Summary for further information). Senator Clodfelter explained the issue of blank checks, Senator's David Hoyle, Clark Jenkins, Phillip Berger, Tony Rand, Martin Nesbitt and RC Soles had questions regarding cast donations. Staff attorney, Bill Gilkeson answered the questions. Senator's Peter Brunstetter, Harry Brown, Jerry Tillman, Richard Stevens and Martin Nesbitt had questions regarding contributions of fifty

dollars. Representative Ross answered the questions. Senator Tony Rand offered an Amendment to the bill. Senator Martin Nesbitt offered Amendments to the bill and Senator Davis Hoyle offered an Amendment to the bill. Senator Clodfelter stated that the bill would be displaced at this time, and heard at a later meeting,

HB-1844 (Executive Branch Ethics Act 1.) was introduced by Senator Clodfelter. Representative Joe Hackney explained the Ethics bills and the changes that were made. Representative Ross, Chair of Subcommittee of the House Lobbying Reforms, spoke briefly. Senator Clodfelter stated that the bill would be brought back for the afternoon J-1 meeting.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, June 27, 2006

Senator CLODFELTER,
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) **1048** Governor's DWI Task Force Recommendations.

Draft Number:	PCS 10633
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, June 27, 2006

Senator CLODFELTER,
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) **126** SCHS Beverage/Snack Vending

Draft Number:	PCS 80667
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 126

Committee Substitute Favorable 5/31/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H126-PCS80667-RU-94

Short Title: Gun Permit/OSHA Technical Changes. (Public)

Sponsors:

Referred to:

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TIME-SENSITIVE TECHNICAL CORRECTIONS TO AMEND THE HANDGUN AND CONCEALED CARRY PERMIT STATUTES AND TO AMEND THE OSHA CIVIL PENALTIES STATUTE TO CLARIFY THE DISTINCTION BETWEEN SERIOUS AND NONSERIOUS VIOLATIONS MADE AMBIGUOUS IN 2004.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-404(a)(1) reads as rewritten:

"(a) Upon application, the sheriff shall issue the license or permit to a resident of that ~~county~~ county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a ~~nonresident~~ nonresident, when the sheriff has done all of the following:

(1) ~~Verified~~ Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home,

business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting."

SECTION 2. G.S. 14-415.13(b) reads as rewritten:

"(b) The sheriff shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as necessary. The sheriff shall determine the criminal and background history of an applicant also by conducting a check through the National Instant Criminal Background Check System (NICS). The cost of processing the set of fingerprints shall be charged to an applicant as provided by G.S. 14-415.19."

SECTION 3. G.S. 95-138(a) reads as rewritten:

"(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, ~~may~~ shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order ~~promulgated pursuant to~~ adopted under this Article, as follows:

(1) A minimum penalty of five thousand dollars ($5,000) to a maximum penalty of seventy thousand dollars ($70,000) may be assessed for each willful or repeat violation.

(2) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) shall be assessed for each ~~nonserious or~~ serious violation.

(2a) A penalty of up to seven thousand dollars ($7,000) may be assessed for each violation that is adjudged not to be of a serious nature.

(3) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) may be assessed ~~for each day that~~ against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.

(4) A ~~maximum~~ penalty of up to seven thousand dollars ($7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article."

SECTION 4. This act becomes effective June 30, 2006.

HOUSE BILL 126:
Gun Permit/OSHA Technical Amendments.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 27, 2006
Introduced by:	Reps. Insko, Preston	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to Second Edition H126-CSRU-94		

SUMMARY: ***The Senate Committee Substitute for House Bill 126 would make time-sensitive technical changes to the pistol permit and concealed handgun permit statutes to conform to federal law and the OSHA civil penalties statute.***

CURRENT LAW: Current law requires national criminal history checks for pistol permits and concealed handgun permits but does not specify how those checks are to be performed. Current law authorizes the Department of Labor to assess penalties for serious and nonserious OSHA violations in a range of a minimum of $5000 to a maximum of $70,000, but after the statute was rewritten in 2004, it is not clear how the minimum and maximum penalties apply for serious and nonserious violations.

BILL ANALYSIS: Section 1 of the bill makes a technical change to the pistol permit statute to clarify that national criminal history record checks are to be conducted through the National Instant Criminal Background Check System (NCIS) in order to comply with federal regulations promulgated under the Brady Handgun Violence Prevention Act.

Section 2 makes the same technical change to the concealed handgun permit statute to clarify that the criminal history check is to be conducted through the National Instant Criminal Background Check System (NCIS).

Section 3 amends a statute concerning civil penalties for OSHA violations, restoring a distinction between serious violations and nonserious violations for purposes of determining whether the imposition of a penalty is mandatory or discretionary. The distinction was made ambiguous in a 2004 rewrite of the statute. This section does not provide for a new fee or penalty.

EFFECTIVE DATE: The bill becomes effective June 30, 2006.

BACKGROUND: These sections passed both the Senate and the House last year in the Senate and House 2005 Technical Corrections bills (HB 327 and SB 602), in exactly this same language. These changes need to be made in North Carolina law by June 30, 2006 in order for the State to be in conformity with federal law. Extensions on the applicability of the new federal requirements have been extended to the State through June 30, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 126

Short Title:	Any-Precinct Voting Pilot.	(Public)
Sponsors:	Representatives Insko, Preston (Primary Sponsors); Alexander, Luebke, and Weiss.	
Referred to:	Election Law and Campaign Finance Reform.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT A PILOT PROGRAM IN WHICH THE METHODS USED IN ONE-STOP VOTING WOULD CONTINUE THROUGH ELECTION DAY AS THE PREDOMINANT VOTING METHOD, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. The State Board of Elections shall select up to 10 counties in which to conduct a pilot program during the 2005 and 2006 elections. In selecting those counties, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted in a county only with the concurrence of the county board of elections. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163-227.2 through election day as the principal method of voting. In the counties participating in the pilot, the State Board shall adopt a plan in which the following shall occur:

(1) Any voter properly registered in the county may vote at any one-stop site during the one-stop period established in G.S. 163-227.2 and on election day.

(2) All one-stop sites used in the pilot counties shall have online connection to the voter registration system so that voters can be checked.

(3) The number of precinct voting places open on election day shall be reduced or eliminated.

(4) The larger number of one-stop sites may be open on election day than during the earlier part of the one-stop period.

(5) Where technically feasible, the election returns shall be reported by precinct, using all the precincts in existence in the county, whether or not the precinct polling place is open.

(6) The State Board shall determine which ballots must be made retrievable and identifiable to the voter in order to ensure that the vote count by eligible voters is accurate. If any vote need not be identifiable to the voter, it shall not be made so, notwithstanding G.S. 163-227.2(e1).

(7) Notwithstanding G.S. 163-227.2(g), the State Board may allow the county board in a pilot county to designate one-stop sites in commercial buildings that are not public buildings.

(8) In designing the pilot program, the State Board shall ensure fairness to all voters, candidates, and parties, including candidates and voters in counties outside the pilot counties.

SECTION 2. This act is effective when it becomes law. The State Board of Elections shall closely monitor the pilot program and report its findings and recommendations to the General Assembly at its 2006 Regular Session and to the 2007 General Assembly.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1846

Committee Substitute Favorable 6/6/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1846-CSRR-71 [v.5]

6/21/2006 9:04:10 PM

Short Title: 2006 Campaign Finance Changes. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO PROHIBIT THE USE OF BLANK PAYEE CHECKS IN CAMPAIGN CONTRIBUTIONS; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE; AND TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.14(b) reads as rewritten:

"(b) No entity shall ~~give,~~ make, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of ~~one hundred~~ fifty dollars ~~($100.00)~~ ($50.00) unless such contribution ~~be~~ is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No contribution in the form of check, draft, money order, credit card charge, debits or other noncash method may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record."

SECTION 2. G.S. 163-278.20 is repealed.

SECTION 3. G.S. 163-278.19(b) reads as rewritten:

"(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, ~~except as provided in G.S. 163-278.20,~~ and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever."

SECTION 4. G.S. 163-278.8 reads as rewritten:

"**§ 163-278.8. Detailed accounts to be kept by political treasurers.**

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee. The account of each contribution shall include the the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date that contribution was received. The account of each contribution shall be kept regardless of the size or form of the contribution, and regardless of whether the contribution was received at a fund-raising event.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) Repealed by Session Laws 2004-125, s. 5(a), effective July 20, 2004, and applicable to contributions made on or after January 1, 2003.

~~(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars ($100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars ($100.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of one hundred dollars ($100.00) or less,~~

~~each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars ($100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars ($100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars ($100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt.~~

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers."

SECTION 5. G.S. 163-278.11 reads as rewritten:

"**§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.**

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) Contributions. – Except as provided in subsection (a1) of this section, ~~A~~ a list of all contributions ~~required to be listed under G.S. 163-278.8~~ received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution

was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, "principal occupation of the contributor" means the contributor's:

a. Job title or profession; and

b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(3) Loans. – Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(a1) Threshold for Reporting Identity of Contributor. – A treasurer shall not be required to report the name, address, or principal occupation of any individual resident of the State who contributes fifty dollars ($50.00) or less to the treasurer's committee during an election cycle. The State Board of Elections shall provide on its reporting forms for the reporting of contributions below that threshold. On those reporting forms, the State Board may require date and amount of contributions below the threshold, but may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) Best Efforts. – When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this ~~Article.~~Article and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include ~~the~~ a provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain"."

SECTION 6. G.S. 163-278.15 reads as rewritten:

"**§ 163-278.15. No acceptance of contributions made by corporations, foreign and ~~domestic.~~domestic, or other prohibited sources.**

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North ~~Carolina.~~ Carolina, or made by any business entity, labor union, professional association, or insurance company. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

SECTION 7. G.S. 163-278.7 reads as rewritten:

"**§ 163-278.7. Appointment of political treasurers.**

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. – When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the ~~treasurer,~~ candidate, political committee, or referendum committee ~~who~~ and shall be fully responsible for any act or acts committed by ~~an~~ the assistant ~~treasurer,~~treasurer. ~~and the~~The treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political ~~committee, prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~office within three months of appointment, and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing~~ the training as to the duties of the ~~office,~~office in person, through ~~and shall conduct~~ regional ~~seminars for in-person training.~~ seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the ~~treasurer.~~treasurer and assistant treasurer."

SECTION 8. G.S. 163-278.9 is amended by adding a new subsection to read:

"(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f)."

SECTION 9. Sections 1 through 6 of this act become effective January 1, 2007 and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163-278.20 is not effective retroactively and shall not be deemed to render unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1844

Committee Substitute Favorable 5/11/06
Third Edition Engrossed 5/16/06

Short Title: Executive Branch Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

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

"**Chapter 138A.**

"**Executive Branch Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'Executive Branch Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no place in decision-making for the public. Public officials must exercise their duties

responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State executive branch board, commission, council, committee, task force, authority, or similar public body, however denominated, except for those public bodies that have only advisory authority.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the public servant or any member of the public servant's immediate family has a pecuniary interest. For purposes of this sub-subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
2. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(8) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(9) Employing entity. – Any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State.

(10) Extended family. – Spouse, descendant, ascendant, or sibling of the public servant or descendant, ascendant, or sibling of the spouse of the public servant.

(11) Immediate family. – An unemancipated child of the public servant residing in the household and the public servant's spouse, if not legally separated.

(12) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(13) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(14) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the public servant, the public servant's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the public servant, the public servant's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(15) Public event. – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

(16) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivisions a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(17) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the public servant or a member of the public servant's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"Ethical Standards for Public Servants.

"**§ 138A-6. Use of public position for private gain.**

(a) A public servant shall not knowingly use the public servant's public position in any manner that will result in financial benefit, direct or indirect, to the public servant, a member of the public servant's extended family, or a person with whom, or business with which, the public servant is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a public servant that the public servant would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the public servant's ability to protect the public interest and perform the public servant's official duties would not be compromised.

(b) A public servant shall not mention or permit another person to mention the public servant's public position in nongovernmental advertising that advances the private interest of the public servant or others. The prohibition in this subsection shall not apply to political advertising, news stories, or news articles.

(c) Notwithstanding G.S. 163-278.16A, no public servant as defined in G.S. 138A-3(16)a. of this Article shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that public servant's name, picture, or voice, except in case of State or

national emergency and only if the announcement is reasonably necessary to their official function.

"**§ 138A-7. Gifts.**

(a) A public servant shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the public servant, or for another person, in return for being influenced in the discharge of the public servant's official responsibilities, other than that which is received by the public servant from the State for acting in the public servant's official capacity.

(b) A public servant may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates.

(c) No public servant shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d) Subsection (c) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the public servant.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national or regional organization in which the public servant or the public servant's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.
(10) Anything for which fair market value is paid by the public servant.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
(15) Gifts from the public servant's extended family, or a member of the same household of the public servant, or gifts received in conjunction with a marriage, birth, adoption, or death.
(16) Things of monetary value given to a public servant valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in the performance of the public servant's official duties.
b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.
c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.
(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(e) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable

costs, received as gifts shall be donated to charity, destroyed, or provided for consumption among the entire staff or the public.

(f) A public servant shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the public servant for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the public servant's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a public servant in conducting an activity within the duties of the public servant, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the public servant.

(g) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 138A-8. Other compensation.**

A public servant shall not solicit or receive personal financial gain, other than that received by the public servant from the State, or with the approval of the employing entity, for acting in the public servant's official capacity, or for advice or assistance given in the course of carrying out the public servant's duties.

"**§ 138A-9. Use of information for private gain.**

A public servant shall not use or disclose information gained in the course of, or by reason of, the public servant's official responsibilities in a way that would affect a personal financial interest of the public servant, a member of the public servant's extended family, or a person with whom or business with which the public servant is associated. A public servant shall not improperly use or disclose any information deemed confidential by State law and therefore not a public record.

"**§ 138A-10. Appearance of conflict.**

A public servant shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 138A-11. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the public servant's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 138A-11. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest or an appearance of a conflict. If the public servant is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the public servant has a duty to inquire of the Commission as to that conflict or appearance of conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government appointees and employees.

"**§ 138A-12. Participation in official actions.**

(a) Except as permitted by subsection (e) of this section, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to (i) a business competitor of the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from participation in the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take reasonable and appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rulemaking or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) Notwithstanding subsections (a) and (c) of this section, a public servant may participate in an official action under any of the following circumstances:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the public servant, the public servant's extended family, or business with which the public servant is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where an official action affects or would affect the public servant's compensation and allowances as a public servant.

(3) Before the public servant participated in the official action, the public servant requested and received from the Commission a written advisory opinion that authorized the participation.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public body records in its minutes that it cannot obtain a quorum in order to take the official action because members are disqualified from acting under this section.

(7) When a public servant notifies, in writing, the Commission that the public servant or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action.

"**§ 138A-13. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-14. Employment and supervision of members of public servant's extended family.**

A public servant shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the public servant to a State or local office or position to which the public servant supervises or manages. A public servant

shall not participate in an action relating to the discipline of a member of the public servant's extended family.

"**§ 138A-15. Other ethics standards.**

Nothing in this Chapter shall prevent constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other State executive boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-16 through 19. [Reserved]**

"Article 3.

"State Ethics Commission.

"**§ 138A-20. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-21. Membership.**

(a) The Commission shall consist of seven members appointed by the Governor. No more than four members may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) One member shall serve an initial term of one year.
(2) Two members shall serve initial terms of two years.
(3) Two members shall serve initial terms of three years.
(4) Two members shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) The Governor shall fill any vacancies in appointments for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
(2) Hold office in any political party.
(3) Participate in or contribute to the political campaign of any public servant or any candidate for a public office as a public servant over which the Commission would have jurisdiction or authority.
(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Commission shall elect a chair and vice-chair annually. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

"**§ 138A-22. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Four members of the Commission constitute a quorum.

"**§ 138A-23. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-24. Powers and duties.**

In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to public servants in complying with this Chapter.

(2) Develop readily understandable forms, policies, rules, and procedures to accomplish the purposes of the Chapter.

(3) Receive and review all statements of economic interests filed with the Commission by prospective and actual public servants and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(4) Investigate alleged violations in accordance with G.S. 138A-25.

(5) Render advisory opinions in accordance with G.S. 138A-26.

(6) Initiate and maintain oversight of ethics educational programs for public servants and their staffs consistent with G.S. 138A-27.

(7) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(8) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants in attending to and performing their duties.

(9) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(10) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

"**§ 138A-25. Investigations by the Commission.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written

request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-24.

(3) The alleged violation of the criminal law by a public servant in the performance of that individual's official duties.

(4) The alleged violation of G.S. 126-14.

(b) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the public servant against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to initiate investigations upon request of any member if there is reason to believe that a public servant has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(1) of this section.

(e) Public Servant Cooperation With Investigation. – Public servants shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of an individual, the Commission shall provide written notice to the individual who filed the complaint and the public servant as to the fact of the investigation and the charges against the public servant. The public servant shall be given an opportunity to file a written response with the Commission. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint shall be public records.

(h) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints and responses received. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a public hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, the public servant, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Commission on a complaint may be held in closed session, but the decision of the Commission shall be announced in open session.

c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Settlement of Investigations. – The parties may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(j) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a public or private admonishment to the public servant and notify the employing entity, if applicable.

b. Refer the matter to the Governor, the employing entity that appointed or employed the public servant or of which the public servant is a member, or the General Assembly for constitutional officers of the State, for appropriate action, and make recommendations on sanctions under subsection (k) of this section.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Commission shall retain its records or findings in confidence, unless the public servant under inquiry requests in writing that the records and findings be made public. If the Commission later finds that a public servant's subsequent unethical activities were similar to and the subject of an earlier private

admonishment, then the Commission may make public the earlier admonishment and the records and findings related to it.

(k) Recommendations of Sanctions. – If the Commission determines, after proper review and investigation, that action is appropriate, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In formulating appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servants as set forth in Article 2 of this Chapter, including those dealing with conflicts of interest and appearances of conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-38(c).

(9) The public servant's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

If the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. As it deems necessary and proper, the Commission may make referrals to appropriate State officials, including law enforcement officials, for investigation of wrongful conduct by State employees or appointees discovered during the course of a complaint investigation, regardless of whether the individual is a public servant under this Chapter. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over public servants or other State employees or appointees.

(l) Findings and Record. – The Commission shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Commission investigations. In all matters in which the complaint is a public record, the Commission shall ensure that a complete record is made and preserved as a public record.

(m) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of the applicable employing entity to discipline the public servant.

(n) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a pubic servant ceases to be a public servant.

(o) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not matters of public record, except as otherwise provided in this section.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-26. Advisory opinions.**

(a) At the request of any public servant, any individual not otherwise the public servant who is responsible for the supervision or appointment of a person who is a public servant, legal counsel for any public servant, any ethics liaison under G.S. 138A-27, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(c) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all public servants upon publication.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 138A-27. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all public servants and their immediate staffs a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs upon their election, appointment or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(b) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(c) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all public servants. Publication under this subsection may be done electronically.

(d) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to public servants. They shall be made available electronically as resource material to public servants and ethics liaisons, upon request.

(e) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-28. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings

regarding individual public servants in that person's agency or on that person's board, or under person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Public Servants set forth in Article 2 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-27 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii)

provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants by their appointing authorities. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-29 through 34. [Reserved]**

"Article 4.

"Public Disclosure of Economic Interests.

"**§ 138A-35. Purpose.**

The purpose of disclosure of the financial and personal interests by public servants is to assist public servants and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the public servant's private interests and the public servant's public duties. It is critical to this process that current and prospective public servants examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the public servant's private interests and the public servant's public duties. Public servants must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the public servant's public position or duties might impact the public servant's private interests. Public servants have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the public servant's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-36. Statement of economic interest; filing required.**

(a) Every public servant subject to this Chapter who is elected, appointed, or employed and entitled to annual compensation from the State of more than forty thousand dollars ($40,000), including one appointed to fill a vacancy in elective office, shall file a statement of economic interest with the Commission prior to the public servant's initial appointment, election, or employment and no later than January 31 every year thereafter. A prospective public servant required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to public servants whose terms have expired but who continue to serve until their replacement is appointed.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days of their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Except as otherwise filed under subsection (a) of this section, a candidate for the Council of State shall file the statement of economic interest at the same place and

in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) The executive director of the State Board of Elections shall forward a certified copy of the statement of economic interest to the Commission for evaluation.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section, the Commission shall furnish to all other public servants the appropriate forms needed to comply with this Article.

"**§ 138A-37. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or is employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records. After becoming public records, statements shall be made available for inspection and copying by any person during normal business hours at the Commission's office.

"**§ 138A-38. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the public servant. Answers must be provided to all questions. The form shall include the following information about the public servant and the public servant's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand

dollars ($10,000) of the prospective or actual public servant, and the public servant's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the public servant or the public servant's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the public servant and the spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each non-publicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the filing public servant shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the filing public servant, the members of the public servant's immediate family are the beneficiaries of a vested trust created, established, or controlled by the public servant, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the public servant, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The filing public servant shall make a good faith effort to list any individual or business entity with which the filing public servant, the public servant's extended family, or any business with which the public servant or a member of the public servant's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the public servant; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a

conflict of interest or appearance of a conflict of interest for the public servant. For each individual or business entity listed under this subsection, the filing public servant shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the public servant is a practicing attorney, an indication of whether the public servant, or the law firm with which the public servant is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedent's estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the public servant or the public servant's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the public servant's extended family, and a list of all gifts,

and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the employing entity.

n. A list of all bankruptcies filed during the preceding five years by the public servant, the public servant's spouse, or any entity in which the public servant, or the public servant's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the public servant of the public servant's immediate family is a member.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.

(4) In addition to the information required to be reported under subdivisions (1), (2), and (3) of this subsection, the filing public servant shall provide in the public servant's statement a list of any felony convictions or any other information that a reasonable person would conclude is necessary either to carry out the purposes of this Chapter or to fully disclose any potential conflict of interest or appearance of conflict. If a public servant is uncertain of whether particular information is necessary, then the public servant shall consult the Commission for guidance.

(5) Each statement of economic interest shall contain sworn certification by the filing public servant that the public servant has read the statement and that, to the best of the public servant's knowledge and belief, the statement is true, correct, and complete. The public servant's sworn certification also shall provide that the public servant has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(6) If the public servant believes a potential for conflict exists, the public servant has a duty to inquire of the Commission as to that potential conflict.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was signed.

(c) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The public servant who submitted the statement.

(2) The head of the agency in which the public servant serves.
(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.
(4) The appointing or hiring authority for those public servants not under the Governor's authority.
(5) The State Board of Elections for those public servants who are elected.

"**§ 138A-39. Failure to file.**

(a) Within 30 days after the date due in accordance with G.S. 138A-36, for every public servant from whom a statement of economic interest has not been received by the Commission, or whose statement of economic interest has been received by the Commission but deemed by the Commission to be incomplete, the Commission shall notify the public servant of the failure to file or complete and shall notify the public servant that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the public servant shall be subject to a fine as provided for in this section.

(b) Any public servant who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any public servant to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-40. Concealing or failing to disclose material information.**

A public servant who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-41. Penalty for false or misleading information.**

A public servant who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.
"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any public servant is grounds for disciplinary action. Except as provided in Article 4 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject

to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(f) The State Ethics Commission may seek to enjoin violations of G.S. 138A-9."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

The Codifier of Rules shall publish unedited the rules and advisory opinions issued by the State Ethics Commission under Chapter 138A of the General Statutes in the North Carolina Register as they are received from the State Ethics Commission, in the format required by the Codifier.

The Codifier of Rules shall publish unedited in the North Carolina Administrative Code the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

SECTION 4. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 5. This act becomes effective October 1, 2006, applies to public servants on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6-27-06 A.M.
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Celia Cox	OSBM
David Cartner	NC Bar Assoc.
Louisa Warren	NCCLR
Paula J. Wolf	ACLU-NC
Jill Shotzberger	ACLU-NC
Rebekah Gorcaros	ACLU-NC
[illegible]	NCATL
[illegible]	N.C. [illegible]
Clare Foster	NC Voters for Clean Elections
Richard O'Brien	PFFPNC
Doug Henn	NC Bar Assoc

EB

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

6/27/06 A.M.
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Bob Thompson	NCPBA
Henry Hatch	N.C.B.A.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 27, 2006	1:00 p.m.	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1843	State Government Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1844	Executive Branch Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1846	2006 Campaign Finance Changes.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 126	Gun Permit/OSHA Technical Changes.	Representative Preston Representative Insko

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 27, 2006 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 1:03 p.m. with seventeen members present. Pages were the same as for the 10:00 a.m. meeting.

HB-1844 (Executive Branch Ethics Act.1 was introduced by Senator Clodfelter. Staff attorney, Walker Reagan explained Executive Branch Ethics and Judicial Branch Ethics, and asked for questions. Senator's Clodfelter, Richard Stevens, and Phillip Berger had questions. Representative Joe Hackney and Mr. Reagan answered the questions. Senator Clodfelter stated he would appoint a work committee consisting of Senator's Brunstetter, Janet Cowell, Richard Stevens, and Martin Nesbitt to study the bill and bring their findings back to the next meeting. He also stated that the next Judiciary 1 meeting will be a two hour meeting.

Being no further business the meeting adjourned at 1:55 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

P.M. meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1844
Committee Substitute Favorable 5/11/06
Third Edition Engrossed 5/16/06

Short Title: Executive Branch Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

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

"**Chapter 138A.**

"**Executive Branch Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'Executive Branch Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no place in decision-making for the public. Public officials must exercise their duties

responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State executive branch board, commission, council, committee, task force, authority, or similar public body, however denominated, except for those public bodies that have only advisory authority.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the public servant or any member of the public servant's immediate family has a pecuniary interest. For purposes of this sub-subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
2. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(8) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(9) Employing entity. – Any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State.

(10) Extended family. – Spouse, descendant, ascendant, or sibling of the public servant or descendant, ascendant, or sibling of the spouse of the public servant.

(11) Immediate family. – An unemancipated child of the public servant residing in the household and the public servant's spouse, if not legally separated.

(12) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(13) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(14) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the public servant, the public servant's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the public servant, the public servant's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(15) Public event. – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

(16) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivisions a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(17) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the public servant or a member of the public servant's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"Ethical Standards for Public Servants.

"**§ 138A-6. Use of public position for private gain.**

(a) A public servant shall not knowingly use the public servant's public position in any manner that will result in financial benefit, direct or indirect, to the public servant, a member of the public servant's extended family, or a person with whom, or business with which, the public servant is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a public servant that the public servant would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the public servant's ability to protect the public interest and perform the public servant's official duties would not be compromised.

(b) A public servant shall not mention or permit another person to mention the public servant's public position in nongovernmental advertising that advances the private interest of the public servant or others. The prohibition in this subsection shall not apply to political advertising, news stories, or news articles.

(c) Notwithstanding G.S. 163-278.16A, no public servant as defined in G.S. 138A-3(16)a. of this Article shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that public servant's name, picture, or voice, except in case of State or

national emergency and only if the announcement is reasonably necessary to their official function.

"**§ 138A-7. Gifts.**

(a) A public servant shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the public servant, or for another person, in return for being influenced in the discharge of the public servant's official responsibilities, other than that which is received by the public servant from the State for acting in the public servant's official capacity.

(b) A public servant may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates.

(c) No public servant shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d) Subsection (c) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the public servant.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national or regional organization in which the public servant or the public servant's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid by the public servant.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the public servant's extended family, or a member of the same household of the public servant, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to a public servant valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(e) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable

costs, received as gifts shall be donated to charity, destroyed, or provided for consumption among the entire staff or the public.

(f) A public servant shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the public servant for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the public servant's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a public servant in conducting an activity within the duties of the public servant, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the public servant.

(g) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 138A-8. Other compensation.**

A public servant shall not solicit or receive personal financial gain, other than that received by the public servant from the State, or with the approval of the employing entity, for acting in the public servant's official capacity, or for advice or assistance given in the course of carrying out the public servant's duties.

"**§ 138A-9. Use of information for private gain.**

A public servant shall not use or disclose information gained in the course of, or by reason of, the public servant's official responsibilities in a way that would affect a personal financial interest of the public servant, a member of the public servant's extended family, or a person with whom or business with which the public servant is associated. A public servant shall not improperly use or disclose any information deemed confidential by State law and therefore not a public record.

"**§ 138A-10. Appearance of conflict.**

A public servant shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 138A-11. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the public servant's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 138A-11. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest or an appearance of a conflict. If the public servant is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the public servant has a duty to inquire of the Commission as to that conflict or appearance of conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government appointees and employees.

"**§ 138A-12. Participation in official actions.**

(a) Except as permitted by subsection (e) of this section, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to (i) a business competitor of the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from participation in the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take reasonable and appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rulemaking or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) Notwithstanding subsections (a) and (c) of this section, a public servant may participate in an official action under any of the following circumstances:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the public servant, the public servant's extended family, or business with which the public servant is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where an official action affects or would affect the public servant's compensation and allowances as a public servant.

(3) Before the public servant participated in the official action, the public servant requested and received from the Commission a written advisory opinion that authorized the participation.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public body records in its minutes that it cannot obtain a quorum in order to take the official action because members are disqualified from acting under this section.

(7) When a public servant notifies, in writing, the Commission that the public servant or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action.

"**§ 138A-13. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-14. Employment and supervision of members of public servant's extended family.**

A public servant shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the public servant to a State or local office or position to which the public servant supervises or manages. A public servant

shall not participate in an action relating to the discipline of a member of the public servant's extended family.

"**§ 138A-15. Other ethics standards.**

Nothing in this Chapter shall prevent constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other State executive boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-16 through 19. [Reserved]**

"Article 3.

"State Ethics Commission.

"**§ 138A-20. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-21. Membership.**

(a) The Commission shall consist of seven members appointed by the Governor. No more than four members may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) One member shall serve an initial term of one year.
(2) Two members shall serve initial terms of two years.
(3) Two members shall serve initial terms of three years.
(4) Two members shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) The Governor shall fill any vacancies in appointments for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
(2) Hold office in any political party.
(3) Participate in or contribute to the political campaign of any public servant or any candidate for a public office as a public servant over which the Commission would have jurisdiction or authority.
(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Commission shall elect a chair and vice-chair annually. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

"**§ 138A-22. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Four members of the Commission constitute a quorum.

"**§ 138A-23. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-24. Powers and duties.**

In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to public servants in complying with this Chapter.

(2) Develop readily understandable forms, policies, rules, and procedures to accomplish the purposes of the Chapter.

(3) Receive and review all statements of economic interests filed with the Commission by prospective and actual public servants and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(4) Investigate alleged violations in accordance with G.S. 138A-25.

(5) Render advisory opinions in accordance with G.S. 138A-26.

(6) Initiate and maintain oversight of ethics educational programs for public servants and their staffs consistent with G.S. 138A-27.

(7) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(8) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants in attending to and performing their duties.

(9) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(10) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

"**§ 138A-25. Investigations by the Commission.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written

request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-24.

(3) The alleged violation of the criminal law by a public servant in the performance of that individual's official duties.

(4) The alleged violation of G.S. 126-14.

(b) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the public servant against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to initiate investigations upon request of any member if there is reason to believe that a public servant has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(1) of this section.

(e) Public Servant Cooperation With Investigation. – Public servants shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of an individual, the Commission shall provide written notice to the individual who filed the complaint and the public servant as to the fact of the investigation and the charges against the public servant. The public servant shall be given an opportunity to file a written response with the Commission. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint shall be public records.

(h) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints and responses received. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a public hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, the public servant, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Commission on a complaint may be held in closed session, but the decision of the Commission shall be announced in open session.

c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Settlement of Investigations. – The parties may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(j) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a public or private admonishment to the public servant and notify the employing entity, if applicable.

b. Refer the matter to the Governor, the employing entity that appointed or employed the public servant or of which the public servant is a member, or the General Assembly for constitutional officers of the State, for appropriate action, and make recommendations on sanctions under subsection (k) of this section.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Commission shall retain its records or findings in confidence, unless the public servant under inquiry requests in writing that the records and findings be made public. If the Commission later finds that a public servant's subsequent unethical activities were similar to and the subject of an earlier private

admonishment, then the Commission may make public the earlier admonishment and the records and findings related to it.

(k) Recommendations of Sanctions. – If the Commission determines, after proper review and investigation, that action is appropriate, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In formulating appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servants as set forth in Article 2 of this Chapter, including those dealing with conflicts of interest and appearances of conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-38(c).

(9) The public servant's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

If the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. As it deems necessary and proper, the Commission may make referrals to appropriate State officials, including law enforcement officials, for investigation of wrongful conduct by State employees or appointees discovered during the course of a complaint investigation, regardless of whether the individual is a public servant under this Chapter. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over public servants or other State employees or appointees.

(l) Findings and Record. – The Commission shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Commission investigations. In all matters in which the complaint is a public record, the Commission shall ensure that a complete record is made and preserved as a public record.

(m) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of the applicable employing entity to discipline the public servant.

(n) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a pubic servant ceases to be a public servant.

(o) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not matters of public record, except as otherwise provided in this section.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-26. Advisory opinions.**

(a) At the request of any public servant, any individual not otherwise the public servant who is responsible for the supervision or appointment of a person who is a public servant, legal counsel for any public servant, any ethics liaison under G.S. 138A-27, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(c) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all public servants upon publication.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 138A-27. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all public servants and their immediate staffs a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs upon their election, appointment or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(b) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(c) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all public servants. Publication under this subsection may be done electronically.

(d) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to public servants. They shall be made available electronically as resource material to public servants and ethics liaisons, upon request.

(e) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-28. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings

regarding individual public servants in that person's agency or on that person's board, or under person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Public Servants set forth in Article 2 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-27 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii)

provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants by their appointing authorities. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-29 through 34. [Reserved]**

"Article 4.

"Public Disclosure of Economic Interests.

"**§ 138A-35. Purpose.**

The purpose of disclosure of the financial and personal interests by public servants is to assist public servants and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the public servant's private interests and the public servant's public duties. It is critical to this process that current and prospective public servants examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the public servant's private interests and the public servant's public duties. Public servants must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the public servant's public position or duties might impact the public servant's private interests. Public servants have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the public servant's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-36. Statement of economic interest; filing required.**

(a) Every public servant subject to this Chapter who is elected, appointed, or employed and entitled to annual compensation from the State of more than forty thousand dollars ($40,000), including one appointed to fill a vacancy in elective office, shall file a statement of economic interest with the Commission prior to the public servant's initial appointment, election, or employment and no later than January 31 every year thereafter. A prospective public servant required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to public servants whose terms have expired but who continue to serve until their replacement is appointed.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days of their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Except as otherwise filed under subsection (a) of this section, a candidate for the Council of State shall file the statement of economic interest at the same place and

in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) The executive director of the State Board of Elections shall forward a certified copy of the statement of economic interest to the Commission for evaluation.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section, the Commission shall furnish to all other public servants the appropriate forms needed to comply with this Article.

"**§ 138A-37. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or is employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records. After becoming public records, statements shall be made available for inspection and copying by any person during normal business hours at the Commission's office.

"**§ 138A-38. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the public servant. Answers must be provided to all questions. The form shall include the following information about the public servant and the public servant's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand

dollars ($10,000) of the prospective or actual public servant, and the public servant's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the public servant or the public servant's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the public servant and the spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each non-publicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the filing public servant shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the filing public servant, the members of the public servant's immediate family are the beneficiaries of a vested trust created, established, or controlled by the public servant, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the public servant, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The filing public servant shall make a good faith effort to list any individual or business entity with which the filing public servant, the public servant's extended family, or any business with which the public servant or a member of the public servant's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the public servant; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a

conflict of interest or appearance of a conflict of interest for the public servant. For each individual or business entity listed under this subsection, the filing public servant shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the public servant is a practicing attorney, an indication of whether the public servant, or the law firm with which the public servant is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedent's estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the public servant or the public servant's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the public servant's extended family, and a list of all gifts,

and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the employing entity.

n. A list of all bankruptcies filed during the preceding five years by the public servant, the public servant's spouse, or any entity in which the public servant, or the public servant's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the public servant of the public servant's immediate family is a member.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.

(4) In addition to the information required to be reported under subdivisions (1), (2), and (3) of this subsection, the filing public servant shall provide in the public servant's statement a list of any felony convictions or any other information that a reasonable person would conclude is necessary either to carry out the purposes of this Chapter or to fully disclose any potential conflict of interest or appearance of conflict. If a public servant is uncertain of whether particular information is necessary, then the public servant shall consult the Commission for guidance.

(5) Each statement of economic interest shall contain sworn certification by the filing public servant that the public servant has read the statement and that, to the best of the public servant's knowledge and belief, the statement is true, correct, and complete. The public servant's sworn certification also shall provide that the public servant has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(6) If the public servant believes a potential for conflict exists, the public servant has a duty to inquire of the Commission as to that potential conflict.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was signed.

(c) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The public servant who submitted the statement.

(2) The head of the agency in which the public servant serves.
(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.
(4) The appointing or hiring authority for those public servants not under the Governor's authority.
(5) The State Board of Elections for those public servants who are elected.

"**§ 138A-39. Failure to file.**

(a) Within 30 days after the date due in accordance with G.S. 138A-36, for every public servant from whom a statement of economic interest has not been received by the Commission, or whose statement of economic interest has been received by the Commission but deemed by the Commission to be incomplete, the Commission shall notify the public servant of the failure to file or complete and shall notify the public servant that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the public servant shall be subject to a fine as provided for in this section.

(b) Any public servant who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any public servant to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-40. Concealing or failing to disclose material information.**

A public servant who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-41. Penalty for false or misleading information.**

A public servant who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any public servant is grounds for disciplinary action. Except as provided in Article 4 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject

to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(f) The State Ethics Commission may seek to enjoin violations of G.S. 138A-9."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

The Codifier of Rules shall publish unedited the rules and advisory opinions issued by the State Ethics Commission under Chapter 138A of the General Statutes in the North Carolina Register as they are received from the State Ethics Commission, in the format required by the Codifier.

The Codifier of Rules shall publish unedited in the North Carolina Administrative Code the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

SECTION 4. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 5. This act becomes effective October 1, 2006, applies to public servants on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6/27/06 pm

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valauri	Nationwide
Angie Barrier	CAPA
Leigh Hayden	Board of Ethics
Harold Webb	Wake County
Kristin Kelly	gov. office
Paige Ahlf	Gov. Office
Joyce Pope	civitas institute
ANDY JANORE	GOV'S OFFICE
Haley Montgomery	SOS
[illegible]	[illegible]
Chris Fitzsimon	NC Policy Watch

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 29, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1844	Executive Branch Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 2188	Candidate Challenge Procedure.	Representative Hackney Representative Howard
HB 2195	Liability Protection for State Med Asst. Teams.	Representative Glazier Representative Cunningham

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 29, 2006

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with seventeen members present. He introduced Pages; Molly Hassell, from Greensboro, NC, Clair Hilliard, from Stoneville, NC, Cameron Saunders, from Cary, NC and Ashley Berger, from Eden, NC.

HB-2195 (Liability Protection for State Med Asst Teams) was introduced by Senator Clodfelter. In the absence of bill sponsor, Representative Rick Glazier, Senator Vernon Malone explained that the bill amends the law that provides civil immunity to emergency management workers to add certain health care service providers. (See Bill Summary for further information). Senator's Charlie Albertson and R.C. Soles had questions. Senator's Malone and Clodfelter answered the questions. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

HB-1844 (Executive Branch Ethics Act –I was brought back to committee from the previous meeting on Tuesday, June 27, 2006. Staff attorney, Walker Reagan began on page 8, line 16, explaining ethics changes. Senator's Peter Brunstetter, Tony Rand, had questions on page 8, "employment outside state paid jobs", Senator Clodfelter stated this would be flagged for further discussion. Mr. Perry Newsom, NC Director, Board of Ethics spoke on the bill and answerer the questions. Senator's Richard Stevens, Charlie Albertson, Clark Jenkins had questions on pages 6,9, and 10,"conflict of interest ", Senator Clodfelter stated this would be flagged for further discussion. Senator Janet Cowell had a question on page 11, "extended family"; Senator Clodfelter stated this would be flagged for further discussion. Mr. Reagan and Mr. Newsom answered questions. Senator Clodfelter stated that the bill would be carried over to be discussed further at the next meeting.

HB-2188 (Candidate Challenge Procedure) was introduced by Senator Clodfelter. Representative Julia Howard explained the bill establishes a procedure allowing qualified voters to challenge the qualifications of a candidate. (See Bill Summary for further information). Senator Tony Rand had a question on redistricting. The question was answered by Senator Clodfelter. Senator Clark Jenkins had a question on language on page 2, line 6, page 2, line 9 and page 2, line 29, and offered Amendment #1 to the bill. All members voted yes. Amendment adopted. (See

attached Amendment). Senator Jerry Tillman moved the Amendment be rolled into the bill and given a Favorable Report. All members voted yes. Motion carried.

HB-1844 (Executive Branch Ethics Act-1) was brought back before Committee for further discussion. Mr. Reagan began where he left off at the previous meeting. Senator R.C. Soles had a question on page 11, line 35, Senator Martin Nesbitt had a question on page 11, lines 15 and 35, and Mr. Reagan and Representative Joe Hackney answered the questions.

Being no further business the meeting adjourned at 10:59 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, June 29, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **2195** Liability Protection for State Med Asst. Teams.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Friday, June 30, 2006

Senator CLODFELTER,
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) **2188** Candidate Challenge Procedure.

Draft Number:	PCS 50755
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2195*
Committee Substitute Favorable 6/7/06

Short Title: Liability Protection for State Med Asst Teams. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION FOR HEALTH CARE WORKERS WHEN RESPONDING TO IN-STATE INCIDENTS OUTSIDE THEIR HOSPITAL OR NORMAL JURISDICTION AS MEMBERS OF A STATE MEDICAL ASSISTANCE TEAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-14 reads as rewritten:

"**§ 166A-14. Immunity and exemption.**

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which ~~he~~ the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, ~~nor~~ and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing ~~his~~ the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or

any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include ~~a~~ any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges ~~he~~ the person would ordinarily possess if performing ~~his~~ duties in the State, or political subdivision thereof in which normally employed or rendering services."

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

HOUSE BILL 2195:
Liability Protection for State Med Asst Teams

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 28, 2006
Introduced by:	Reps. Cunningham, Glazier	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***This act amends the law that provides civil immunity to emergency management workers to add certain health care service providers. The act is effective when it becomes law.***

CURRENT LAW: "Emergency management workers" have civil immunity under State law; the definition of an emergency management worker is set forth in subsection (d) of G.S. 166A-14. In addition, by reference to G.S. 90-12.2, persons who provide services have civil immunity where the Governor has declared a disaster or a state of emergency, or a county or municipality by ordinance to deal with states of emergency under specified statutes.

Health care workers working as members of State Medical Assistance Teams are not specifically covered under the definition of "emergency management worker" in G.S. 166A-14. This provision is part of the North Carolina Emergency Management Act of 1977.

BILL ANALYSIS:

This act adds health care workers performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the NC Office of Emergency Medical Services to the definition of "emergency management worker" for the purposes of the Emergency Management Act. The statute provides immunity from liability for related personal injuries and property damage.

EFFECTIVE DATE: When it becomes law.

BACKGROUND: This bill was recommended by the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery in its Interim Report of May 2006. As introduced, this bill was identical to S1490, which is currently in Rules and Operations of the Senate. The second edition added the words "designated by the North Carolina Office of Emergency Medical Services " on page 2, lines 6-7.

Summary contribution by Steve Rose, Staff Attorney.

H2195e2-SMRK-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2195*

Short Title:	Liability Protection for State Med Asst Teams.	(Public)
Sponsors:	Representatives Cunningham, Glazier (Primary Sponsors); Coleman, Goforth, Harrison, Insko, Lucas, McAllister, Rapp, Underhill, Wainwright, and Wray.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION AND WORKERS' COMPENSATION FOR HEALTH CARE WORKERS WHEN RESPONDING TO IN-STATE INCIDENTS OUTSIDE THEIR HOSPITAL OR NORMAL JURISDICTION AS MEMBERS OF A STATE MEDICAL ASSISTANCE TEAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-14 reads as rewritten:

"**§ 166A-14. Immunity and exemption.**

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which ~~he~~ the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing ~~his~~ the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include ~~a~~ any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges ~~he~~ the person would ordinarily possess if performing ~~his~~ duties in the State, or political subdivision thereof in which normally employed or rendering services."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1844

Committee Substitute Favorable 5/11/06

Third Edition Engrossed 5/16/06

Short Title: Executive Branch Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

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

"**Chapter 138A.**

"**Executive Branch Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'Executive Branch Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no place in decision-making for the public. Public officials must exercise their duties

responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State executive branch board, commission, council, committee, task force, authority, or similar public body, however denominated, except for those public bodies that have only advisory authority.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the public servant or any member of the public servant's immediate family has a pecuniary interest. For purposes of this sub-subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
2. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(8) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(9) Employing entity. – Any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State.

(10) Extended family. – Spouse, descendant, ascendant, or sibling of the public servant or descendant, ascendant, or sibling of the spouse of the public servant.

(11) Immediate family. – An unemancipated child of the public servant residing in the household and the public servant's spouse, if not legally separated.

(12) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(13) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(14) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the public servant, the public servant's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the public servant, the public servant's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(15) Public event. – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

(16) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivisions a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(17) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the public servant or a member of the public servant's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"Ethical Standards for Public Servants.

"**§ 138A-6. Use of public position for private gain.**

(a) A public servant shall not knowingly use the public servant's public position in any manner that will result in financial benefit, direct or indirect, to the public servant, a member of the public servant's extended family, or a person with whom, or business with which, the public servant is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a public servant that the public servant would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the public servant's ability to protect the public interest and perform the public servant's official duties would not be compromised.

(b) A public servant shall not mention or permit another person to mention the public servant's public position in nongovernmental advertising that advances the private interest of the public servant or others. The prohibition in this subsection shall not apply to political advertising, news stories, or news articles.

(c) Notwithstanding G.S. 163-278.16A, no public servant as defined in G.S. 138A-3(16)a. of this Article shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that public servant's name, picture, or voice, except in case of State or

national emergency and only if the announcement is reasonably necessary to their official function.

"**§ 138A-7. Gifts.**

(a) A public servant shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the public servant, or for another person, in return for being influenced in the discharge of the public servant's official responsibilities, other than that which is received by the public servant from the State for acting in the public servant's official capacity.

(b) A public servant may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates.

(c) No public servant shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d) Subsection (c) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the public servant.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national or regional organization in which the public servant or the public servant's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid by the public servant.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the public servant's extended family, or a member of the same household of the public servant, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to a public servant valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(e) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable

costs, received as gifts shall be donated to charity, destroyed, or provided for consumption among the entire staff or the public.

(f) A public servant shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the public servant for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the public servant's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a public servant in conducting an activity within the duties of the public servant, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the public servant.

(g) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 138A-8. Other compensation.**

A public servant shall not solicit or receive personal financial gain, other than that received by the public servant from the State, or with the approval of the employing entity, for acting in the public servant's official capacity, or for advice or assistance given in the course of carrying out the public servant's duties.

"**§ 138A-9. Use of information for private gain.**

A public servant shall not use or disclose information gained in the course of, or by reason of, the public servant's official responsibilities in a way that would affect a personal financial interest of the public servant, a member of the public servant's extended family, or a person with whom or business with which the public servant is associated. A public servant shall not improperly use or disclose any information deemed confidential by State law and therefore not a public record.

"**§ 138A-10. Appearance of conflict.**

A public servant shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 138A-11. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the public servant's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 138A-11. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest or an appearance of a conflict. If the public servant is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the public servant has a duty to inquire of the Commission as to that conflict or appearance of conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government appointees and employees.

"**§ 138A-12. Participation in official actions.**

(a) Except as permitted by subsection (e) of this section, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to (i) a business competitor of the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from participation in the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take reasonable and appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rulemaking or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) Notwithstanding subsections (a) and (c) of this section, a public servant may participate in an official action under any of the following circumstances:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the public servant, the public servant's extended family, or business with which the public servant is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where an official action affects or would affect the public servant's compensation and allowances as a public servant.

(3) Before the public servant participated in the official action, the public servant requested and received from the Commission a written advisory opinion that authorized the participation.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public body records in its minutes that it cannot obtain a quorum in order to take the official action because members are disqualified from acting under this section.

(7) When a public servant notifies, in writing, the Commission that the public servant or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action.

"**§ 138A-13. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-14. Employment and supervision of members of public servant's extended family.**

A public servant shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the public servant to a State or local office or position to which the public servant supervises or manages. A public servant

shall not participate in an action relating to the discipline of a member of the public servant's extended family.

"**§ 138A-15. Other ethics standards.**

Nothing in this Chapter shall prevent constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other State executive boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-16 through 19. [Reserved]**

"Article 3.

"State Ethics Commission.

"**§ 138A-20. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-21. Membership.**

(a) The Commission shall consist of seven members appointed by the Governor. No more than four members may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) One member shall serve an initial term of one year.
(2) Two members shall serve initial terms of two years.
(3) Two members shall serve initial terms of three years.
(4) Two members shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) The Governor shall fill any vacancies in appointments for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
(2) Hold office in any political party.
(3) Participate in or contribute to the political campaign of any public servant or any candidate for a public office as a public servant over which the Commission would have jurisdiction or authority.
(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Commission shall elect a chair and vice-chair annually. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

"**§ 138A-22. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Four members of the Commission constitute a quorum.

"**§ 138A-23. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-24. Powers and duties.**

In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to public servants in complying with this Chapter.

(2) Develop readily understandable forms, policies, rules, and procedures to accomplish the purposes of the Chapter.

(3) Receive and review all statements of economic interests filed with the Commission by prospective and actual public servants and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(4) Investigate alleged violations in accordance with G.S. 138A-25.

(5) Render advisory opinions in accordance with G.S. 138A-26.

(6) Initiate and maintain oversight of ethics educational programs for public servants and their staffs consistent with G.S. 138A-27.

(7) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(8) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants in attending to and performing their duties.

(9) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(10) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

"**§ 138A-25. Investigations by the Commission.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written

request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-24.

(3) The alleged violation of the criminal law by a public servant in the performance of that individual's official duties.

(4) The alleged violation of G.S. 126-14.

(b) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the public servant against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to initiate investigations upon request of any member if there is reason to believe that a public servant has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(1) of this section.

(e) Public Servant Cooperation With Investigation. – Public servants shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of an individual, the Commission shall provide written notice to the individual who filed the complaint and the public servant as to the fact of the investigation and the charges against the public servant. The public servant shall be given an opportunity to file a written response with the Commission. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint shall be public records.

(h) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints and responses received. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a public hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, the public servant, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Commission on a complaint may be held in closed session, but the decision of the Commission shall be announced in open session.

c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Settlement of Investigations. – The parties may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(j) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a public or private admonishment to the public servant and notify the employing entity, if applicable.

b. Refer the matter to the Governor, the employing entity that appointed or employed the public servant or of which the public servant is a member, or the General Assembly for constitutional officers of the State, for appropriate action, and make recommendations on sanctions under subsection (k) of this section.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Commission shall retain its records or findings in confidence, unless the public servant under inquiry requests in writing that the records and findings be made public. If the Commission later finds that a public servant's subsequent unethical activities were similar to and the subject of an earlier private

admonishment, then the Commission may make public the earlier admonishment and the records and findings related to it.

(k) Recommendations of Sanctions. – If the Commission determines, after proper review and investigation, that action is appropriate, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In formulating appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servants as set forth in Article 2 of this Chapter, including those dealing with conflicts of interest and appearances of conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-38(c).

(9) The public servant's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

If the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. As it deems necessary and proper, the Commission may make referrals to appropriate State officials, including law enforcement officials, for investigation of wrongful conduct by State employees or appointees discovered during the course of a complaint investigation, regardless of whether the individual is a public servant under this Chapter. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over public servants or other State employees or appointees.

(l) Findings and Record. – The Commission shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Commission investigations. In all matters in which the complaint is a public record, the Commission shall ensure that a complete record is made and preserved as a public record.

(m) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of the applicable employing entity to discipline the public servant.

(n) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a pubic servant ceases to be a public servant.

(o) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not matters of public record, except as otherwise provided in this section.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-26. Advisory opinions.**

(a) At the request of any public servant, any individual not otherwise the public servant who is responsible for the supervision or appointment of a person who is a public servant, legal counsel for any public servant, any ethics liaison under G.S. 138A-27, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(c) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all public servants upon publication.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 138A-27. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all public servants and their immediate staffs a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs upon their election, appointment or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(b) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(c) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all public servants. Publication under this subsection may be done electronically.

(d) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to public servants. They shall be made available electronically as resource material to public servants and ethics liaisons, upon request.

(e) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-28. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings

regarding individual public servants in that person's agency or on that person's board, or under person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Public Servants set forth in Article 2 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-27 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii)

provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants by their appointing authorities. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-29 through 34. [Reserved]**

"Article 4.

"Public Disclosure of Economic Interests.

"**§ 138A-35. Purpose.**

The purpose of disclosure of the financial and personal interests by public servants is to assist public servants and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the public servant's private interests and the public servant's public duties. It is critical to this process that current and prospective public servants examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the public servant's private interests and the public servant's public duties. Public servants must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the public servant's public position or duties might impact the public servant's private interests. Public servants have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the public servant's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-36. Statement of economic interest; filing required.**

(a) Every public servant subject to this Chapter who is elected, appointed, or employed and entitled to annual compensation from the State of more than forty thousand dollars ($40,000), including one appointed to fill a vacancy in elective office, shall file a statement of economic interest with the Commission prior to the public servant's initial appointment, election, or employment and no later than January 31 every year thereafter. A prospective public servant required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to public servants whose terms have expired but who continue to serve until their replacement is appointed.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days of their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Except as otherwise filed under subsection (a) of this section, a candidate for the Council of State shall file the statement of economic interest at the same place and

in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) The executive director of the State Board of Elections shall forward a certified copy of the statement of economic interest to the Commission for evaluation.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section, the Commission shall furnish to all other public servants the appropriate forms needed to comply with this Article.

"**§ 138A-37. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or is employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records. After becoming public records, statements shall be made available for inspection and copying by any person during normal business hours at the Commission's office.

"**§ 138A-38. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the public servant. Answers must be provided to all questions. The form shall include the following information about the public servant and the public servant's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand

dollars ($10,000) of the prospective or actual public servant, and the public servant's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the public servant or the public servant's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the public servant and the spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each non-publicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the filing public servant shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the filing public servant, the members of the public servant's immediate family are the beneficiaries of a vested trust created, established, or controlled by the public servant, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the public servant, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The filing public servant shall make a good faith effort to list any individual or business entity with which the filing public servant, the public servant's extended family, or any business with which the public servant or a member of the public servant's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the public servant; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a

conflict of interest or appearance of a conflict of interest for the public servant. For each individual or business entity listed under this subsection, the filing public servant shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the public servant is a practicing attorney, an indication of whether the public servant, or the law firm with which the public servant is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedent's estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the public servant or the public servant's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the public servant's extended family, and a list of all gifts,

and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the employing entity.

n. A list of all bankruptcies filed during the preceding five years by the public servant, the public servant's spouse, or any entity in which the public servant, or the public servant's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the public servant of the public servant's immediate family is a member.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.

(4) In addition to the information required to be reported under subdivisions (1), (2), and (3) of this subsection, the filing public servant shall provide in the public servant's statement a list of any felony convictions or any other information that a reasonable person would conclude is necessary either to carry out the purposes of this Chapter or to fully disclose any potential conflict of interest or appearance of conflict. If a public servant is uncertain of whether particular information is necessary, then the public servant shall consult the Commission for guidance.

(5) Each statement of economic interest shall contain sworn certification by the filing public servant that the public servant has read the statement and that, to the best of the public servant's knowledge and belief, the statement is true, correct, and complete. The public servant's sworn certification also shall provide that the public servant has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(6) If the public servant believes a potential for conflict exists, the public servant has a duty to inquire of the Commission as to that potential conflict.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was signed.

(c) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The public servant who submitted the statement.

(2) The head of the agency in which the public servant serves.
(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.
(4) The appointing or hiring authority for those public servants not under the Governor's authority.
(5) The State Board of Elections for those public servants who are elected.

"**§ 138A-39. Failure to file.**

(a) Within 30 days after the date due in accordance with G.S. 138A-36, for every public servant from whom a statement of economic interest has not been received by the Commission, or whose statement of economic interest has been received by the Commission but deemed by the Commission to be incomplete, the Commission shall notify the public servant of the failure to file or complete and shall notify the public servant that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the public servant shall be subject to a fine as provided for in this section.

(b) Any public servant who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any public servant to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-40. Concealing or failing to disclose material information.**

A public servant who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-41. Penalty for false or misleading information.**

A public servant who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any public servant is grounds for disciplinary action. Except as provided in Article 4 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject

to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(f) The State Ethics Commission may seek to enjoin violations of G.S. 138A-9."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

The Codifier of Rules shall publish unedited the rules and advisory opinions issued by the State Ethics Commission under Chapter 138A of the General Statutes in the North Carolina Register as they are received from the State Ethics Commission, in the format required by the Codifier.

The Codifier of Rules shall publish unedited in the North Carolina Administrative Code the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

SECTION 4. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 5. This act becomes effective October 1, 2006, applies to public servants on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

Final Ed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2188

Committee Substitute Favorable 6/21/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H2188-PCS50755-RR-74

Short Title: Candidate Challenge Procedure. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

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

"Article 11B.

"Challenge to a Candidacy.

"**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned.

"**§ 163-127.2. When and how a challenge to a candidate may be made.**

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

"**§ 163-127.3. Panel to conduct the hearing on a challenge.**

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire State. – If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel. A meeting of the Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

(3) Entire State. – If the district for the office subject to the challenge consists of the entire State, the panel shall be the Board.

"**§ 163-127.4. Conduct of hearing by panel.**

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to the panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

"**§ 163-127.5. Burden of proof.**

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

"**§ 163-127.6. Appeals.**

(a) Appeals from Single or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office. The appeal shall be in the nature of certiorari.

(b) Appeals from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Court of Appeals by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel. The appeal shall be in the nature of certiorari."

SECTION 2. G.S. 163-106(g) reads as rewritten:

"(g) When any candidate files a notice of candidacy with a ~~county~~ board of elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or director~~board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who ~~is not eligible under subsection (c) of this section.~~ does not meet the constitutional or statutory qualifications for the office, including residency.

The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the ~~sheriff.~~sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the cancellation. If the candidate requests a hearing, the hearing

shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 3. G.S. 163-122 is amended by adding a new subsection to read:

"(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 4. G.S. 163-123 is amended by adding a new subsection to read:

"(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 5. G.S. 163-295 reads as rewritten:

"**§ 163-295. Municipal and special district elections; application of Chapter 163.**

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles."

SECTION 6. The North Carolina Supreme Court is respectfully requested to adopt rules necessary to implement the provisions as to appeal in G.S. 163-127.6.

SECTION 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2188

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

H2188-ARR-129 [v.2]

Date 6-29 ,2006

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

Senator JENKINS

moves to amend the bill on page 2, line 6,
by deleting the term "covers all or part of" and substituting "contains territory in"; and

on page 2, line 9,
by rewriting that line to read:
"subject to the challenge contains territory in more than one county but is less than the"

on page 2, line 29,
by deleting the term "covers" and substituting the term "consists of".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL 2188:
Candidate Challenge Procedure

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 28, 2006
Introduced by:	Reps. Hackney, Howard	**Summary by:**	William R. Gilkeson
Version:	Second Edition		Committee Co-Counsel

SUMMARY: The Second Edition of House Bill 2188 establishes a procedure allowing qualified voters to challenge the qualifications of a candidate. Effective January 1, 2007, and applies to actions filed on or after that date.

CURRENT LAW: Currently, NC election law has no specific procedure to challenge a notice of candidacy or a petition to be a candidate. Article 8 of Chapter 163 deals with challenges to voter registration, and G.S. 163-182.9 through 163-182.12, address election protests. The boards of elections now handle challenges to candidacy through a procedure that combines the challenges-to-voter-registration procedure and the protest procedure.

A challenge to a voter's registration may be brought only by another voter in the same county, and must be heard by that county's board of elections. The electorates for many offices, of course, cover parts of more than one county.

BILL ANALYSIS:

Section 1 creates a new Article allowing candidate challenges.

163-127.1 Definitions. It defines a "challenger" as any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

163-127.2. When and How Challenge Made. The Article provides for:

- When a challenge is to be made. - No later than 10 business days after the close of the applicable filing period. A provision is included to allow a protest petition to be filed if the ground(s) for the challenge are discovered after the time period for filing a candidate challenge has passed.
- How a challenge is to be made. - In a verified affidavit by a challenger based on a reasonable suspicion or belief of the facts stated.
- Grounds for challenging the candidate. - The candidate does not meet the constitutional or statutory requirements for office, including residency.

163-127.3. Panel to Conduct Hearing. A challenge is heard by a panel, as follows:

- Single county districts. - If the district for the office subject to the challenge covers all or part of only one county, then the panel is the county board of elections of that county.
- Multicounty but Less than Entire State. – If the district for the office subject to the challenge covers territory in more than one county but is less than the entire State, then the panel is appointed by the State Board of Elections, with all of the following applying:.
    - The State Board shall appoint the panel within 2 business days after the challenge is filed. Meetings of the Board to make appointments are treated as emergency meetings for the purpose of notice for an open meeting.
    - The panel must consist of at least 1 member of the county board of elections in each county in the district of the office. The panel shall have an odd

number of members, no fewer than 3 and no more than 5. If the district covers more than 5 counties, the home county of the candidate and the challenger shall be represented on the panel.
    - In appointing members to the panel, the State Board must appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office.
    - The State Board must, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office.
    - The State Board must designate a chair for the panel.
- Entire State. - If the district for the office subject to the challenge covers the entire State, the panel is the State Board of Elections.

163-127.4. Conduct of Hearing. Each panel must do all of the following:
- Announce the time and location of the hearing within 5 business days after the challenge is filed. The preference of location is the county in which the candidate filed his or her notice or petition of candidacy.
- Allow for depositions prior to the hearing upon the request of either the challenger or candidate.
- Issue subpoenas upon its own motion or allow subpoenas by the parties.
- Give notice of the hearing and a copy of the challenge or summary of the allegations to the challenger, the candidate, certain county political party chairs, and other persons likely to have a significant interest in the challenge. Failure to comply with the notice requirements does not delay the holding of the hearing or invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.
- Render a written decision within 20 business days after the challenge is filed and serve that notice on the parties.

Panels may subpoena witnesses and receive evidence from any person with information concerning the subject of the challenge. The challenger is not required to testify unless subpoenaed by a party. The State Board must adopt rules addressing notice to parties, scheduling of hearings, timing of deliberations, and issuance of decisions.

163-127.5. Burden of Proof. The burden of proof is on the candidate, who must show by a preponderance of the evidence based on the whole record, that he or she is a qualified candidate. If the challenge is based on residency, the candidate must show all of the following:
- Actual abandonment of the first domicile and intent not to return to the first domicile.
- Acquisition of a new domicile by actual residence at another place.
- Intent of making the newer domicile a permanent domicile.

163-127.6. Appeals. There are two distinct procedures for appealing the decision of a panel:
- Appeals from Single or Multicounty Panel. - The challenger, a candidate adversely affected by the panel's decision, or any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision may appeal to the State Board. The appeal:
    - Must be taken within 2 business days after the panel serves its written decision on the parties.
    - Must be delivered or deposited in the mail by the end of the second business day after the panel filed its written decision
    - Must be based on the whole record of the hearing with the Board making a decision on an expedited basis.

The State Board's decision may be appealed directly to the NC Court of Appeals no later than two business days after the State Board files its final order.

- Appeals from a Statewide Panel. - The challenger, a candidate adversely affected by the panel's decision, or any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision may appeal from the State Board to the Court of Appeals. The appeal:
    - Must be taken within 2 business days after the panel files the written decision.
    - Must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the panel filed its written decision.
    - Must be based on the whole record of the hearing.

Section 2 modifies the statute dealing with notices of candidacy. It requires the board of elections to cancel the notice of candidacy when a person does not meet the constitutional or statutory qualifications for office, including residency. A candidate who has been adversely affected may request a hearing on the cancellation.

Section 3 adds a new subsection to the statute addressing unaffiliated candidates nominated by petition. It requires the board of elections to immediately inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for office, including residency. A person who has been adversely affected may request a hearing on the cancellation.

Section 4 modifies the statute dealing with petitions for write-in candidates. It requires the board of elections to immediately inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for office, including residency. A person who has been adversely affected may request a hearing on the cancellation.

Section 5 makes a conforming change to clarify that this process would apply to challenges of candidates filing or petitioning to run for municipal office.

Section 6 requests the NC Supreme Court to adopt rules to implement the appeals provisions of the act.

Section 7 states that if the courts declare any section or provision of this act unconstitutional, this does not affect the remainder of the act.

EFFECTIVE DATE: This act becomes effective January 1, 2007, and applies to actions filed on or after that date.

Erika Churchill, co-counsel to House Judiciary I, contributed substantially to this summary.

H2188e2-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2188

Short Title:	Candidate Challenge Procedure.	(Public)
Sponsors:	Representatives Hackney, Howard (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Gibson, Justice, Harrison, Lucas, Luebke, McLawhorn, Martin, Nye, Ross, Sauls, Sherrill, Steen, and West.	
Referred to:	Judiciary I.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

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

"Article 11B.

"Challenge to a Candidacy.

"**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned.

"**§ 163-127.2. When and how a challenge to a candidate may be made.**

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the candidate has filed a notice of candidacy or petitioned.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge include the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

"**§ 163-127.3. Panel to conduct the hearing on a challenge.**

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire state. – If the district for the office subject to the challenge covers more than one county but less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel.

(3) Entire state. – If the district for the office subject to the challenge covers the entire State, the panel shall be the Board.

"**§ 163-127.4. Conduct of hearing by panel.**

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to residents in all parts of the district for the office. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a decision within 20 business days after the challenge is filed.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, to the county chair of each political party in every county in the district for the office, and to those persons likely to have a significant interest in

the resolution of the challenge. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to every panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence by affidavit. The panel may allow evidence to be presented by a person who has received notice of the hearing, if present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order based upon the findings of fact and conclusions of law.

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

"**§ 163-127.5. Burden of proof.**

(a) No challenge may be sustained by the panel absent clear and convincing evidence of the record as a whole. The burden of proof shall be upon the candidate.

(b) If the challenge is based upon a question of residency, the candidate must show, by clear and convincing evidence, all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

"**§ 163-127.6. Appeals.**

(a) Appeals From Single- or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.
(3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

(b) Notice of Appeal. – Appeal must be taken within two business days after the panel files the written decision with the county board of elections in which the candidate filed notice of candidacy or petitioned. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis.

(c) Appeals to Superior Court from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Superior Court of Wake County by any of the following:
(1) The challenger.
(2) A candidate adversely affected by the panel's decision.
(3) Any other person who participated in the hearing and has a significant interest adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Superior Court of Wake County by the end of the second business day after the written decision was filed by the panel. The superior court shall base its appellate decision on the whole record of the hearing conducted by the panel and hear the appeal on an expedited basis. From the final order or decision by the superior court under this subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed no later than two business days after the superior court files its final order or decision. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the appeal and render a decision on an expedited basis."

SECTION 2. G.S. 163-106(g) reads as rewritten:

"(g) When any candidate files a notice of candidacy with a ~~county~~ board of elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or director~~board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who ~~is not eligible under subsection (c) of this section.~~ does not meet the constitutional or statutory qualifications for the office, including residency.

The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the ~~sheriff.~~sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may

request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 3. G.S. 163-122 is amended by adding a new subsection to read:

"(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 4. G.S. 163-123 is amended by adding a new subsection to read:

"(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 6. This act becomes effective January 1, 2007.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6/29/06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCATL
Rebekah Gorham	ACLU-NC
Alex Sewell	WCSR
David Anders	PFPUC
Richard O'Brien	PFPUC
[signature]	Poyner & Spruill
Joel R. Maynard	[illegible]
ANTHONY MALLEN	NCAGC
Kristin Kelly	gov. office
Louisa Warren	NCCLR
Julie Wilder	speaker Black's office
Butch Gunnells	NC Beverage Assoc

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-29-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Jack Brosch	Charlotte Chamber
Rob Arnall	AOC
Bob Phillips	Common Cause NC
Eric Hines	Coalition for Lobby Reform
Steve Keene	NCAS
Hugh Wilson	NCHA
Roz Savitt	NC ACLU
Cameron Contrizano	Daily Bulletin
Jami Fitzgerald	NCFPC
Celia Cox	OSBM
Norwood Laughinghouse	DOS
Lisa Martin	NC HBA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6/29/06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
ANDI'U AMORE	GOV'S OFFICE
John Metter [illegible]	Gov office
Leigh Hayden	staff Brd of Ethics
Perry Newson	ED " " "
Kathleen Edwards	UNC-CH Daily Bulletin
Dan Kane	NCO
DON HOBART	NC DOC
Rob Thompson	NCPIRG
Paul Stock	NCBA
Susan [illegible]	NW
[illegible]	CAPA
Mike Nelson	Conservation Council

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6/29/06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Bill Wilson	AARP
Rob Schofield	NC Ctr for Nonprofits
Rick Zechini	NC Assn. of Realtors
Erin Rider	WOMTF
Mark Trawick	Donald Beason Intern
[illegible]	Master Materials
Jeff Wolk	Daily Bulletin
Colleen Kachinek	Smith Moore
Mark Fleming	UnivenA y
Bob Hall	Democracy NC
[illegible]	NFIB
David Gartner	NC Bar Assoc.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Friday	June 30, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1844	Executive Branch Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1846	Contribution Changes.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 1847	Treasurer Training.	Representative Ross Representative Hackney Representative Howard

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

June 30, 2006

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:09 a.m. with fifteen members present.

HB-1844 (Executive Branch Ethics Act -1) Committee Substitute was brought back for further discussion. Staff attorney, Walker Reagan continued explanation on page 12, line 1 where the discussion stopped at the previous meeting. Senator's R.C. Soles, Phillip Berger, Richard Stevens, Jerry Tillman, Dan Clodfelter, Clarke Jenkins, Harry Brown, Andrew Brock, and Martin Nesbitt had questions on several topics in the bill. Mr. Reagan answered questions and Senator Clodfelter stated that these sections would be flagged for more study and discussion at the next meeting.

Being no further business the meeting was adjourned at 10:57 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

CORRECTED REPORT

Friday, June 30, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

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

H.B. 143 Exempt Agri-Tourism from Privilege Tax.

Draft Number:	70791
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) 1963 Revenue Laws Tech. & Motor Fuel Tax Changes.

Draft Number:	50756
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) 1048 Governor's DWI Task Force Recommendations.

Draft Number:	30617
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

Senate Finance Report II for June 30, 2006.

Janet Pruitt

JUN 30 2006

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1844

Committee Substitute Favorable 5/11/06
Third Edition Engrossed 5/16/06

Short Title: Executive Branch Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE EXECUTIVE BRANCH ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

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

"**Chapter 138A.**

"**Executive Branch Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'Executive Branch Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and this power cannot be used to advance narrow interests for oneself, other persons, or groups. Self-interest, partiality, and prejudice have no place in decision-making for the public. Public officials must exercise their duties

responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State executive branch board, commission, council, committee, task force, authority, or similar public body, however denominated, except for those public bodies that have only advisory authority.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the public servant or any member of the public servant's immediate family has a pecuniary interest. For purposes of this sub-subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
2. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(8) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(9) Employing entity. – Any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State.

(10) Extended family. – Spouse, descendant, ascendant, or sibling of the public servant or descendant, ascendant, or sibling of the spouse of the public servant.

(11) Immediate family. – An unemancipated child of the public servant residing in the household and the public servant's spouse, if not legally separated.

(12) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(13) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(14) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the public servant, the public servant's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the public servant, the public servant's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(15) Public event. – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

(16) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivisions a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivisions a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a), and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(17) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the public servant or a member of the public servant's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The public servant or a member of the public servant's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"Ethical Standards for Public Servants.

"**§ 138A-6. Use of public position for private gain.**

(a) A public servant shall not knowingly use the public servant's public position in any manner that will result in financial benefit, direct or indirect, to the public servant, a member of the public servant's extended family, or a person with whom, or business with which, the public servant is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a public servant that the public servant would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the public servant's ability to protect the public interest and perform the public servant's official duties would not be compromised.

(b) A public servant shall not mention or permit another person to mention the public servant's public position in nongovernmental advertising that advances the private interest of the public servant or others. The prohibition in this subsection shall not apply to political advertising, news stories, or news articles.

(c) Notwithstanding G.S. 163-278.16A, no public servant as defined in G.S. 138A-3(16)a. of this Article shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that public servant's name, picture, or voice, except in case of State or

national emergency and only if the announcement is reasonably necessary to their official function.

"**§ 138A-7. Gifts.**

(a) A public servant shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the public servant, or for another person, in return for being influenced in the discharge of the public servant's official responsibilities, other than that which is received by the public servant from the State for acting in the public servant's official capacity.

(b) A public servant may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates.

(c) No public servant shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31, or a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d) Subsection (c) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the public servant.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the public servant for a meeting at which the public servant participates in a panel or speaking engagement at the meeting related to the public servant's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, national or regional organization in which the public servant or the public servant's agency is a member.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid by the public servant.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(15) Gifts from the public servant's extended family, or a member of the same household of the public servant, or gifts received in conjunction with a marriage, birth, adoption, or death.

(16) Things of monetary value given to a public servant valued in excess of ten dollars ($10.00) where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(17) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(e) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable

costs, received as gifts shall be donated to charity, destroyed, or provided for consumption among the entire staff or the public.

(f) A public servant shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the public servant for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the public servant's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a public servant in conducting an activity within the duties of the public servant, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the public servant.

(g) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217 or G.S. 14-218.

"**§ 138A-8. Other compensation.**

A public servant shall not solicit or receive personal financial gain, other than that received by the public servant from the State, or with the approval of the employing entity, for acting in the public servant's official capacity, or for advice or assistance given in the course of carrying out the public servant's duties.

"**§ 138A-9. Use of information for private gain.**

A public servant shall not use or disclose information gained in the course of, or by reason of, the public servant's official responsibilities in a way that would affect a personal financial interest of the public servant, a member of the public servant's extended family, or a person with whom or business with which the public servant is associated. A public servant shall not improperly use or disclose any information deemed confidential by State law and therefore not a public record.

"**§ 138A-10. Appearance of conflict.**

A public servant shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 138A-11. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the public servant's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 138A-11. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest or an appearance of a conflict. If the public servant is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the public servant has a duty to inquire of the Commission as to that conflict or appearance of conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government appointees and employees.

"**§ 138A-12. Participation in official actions.**

(a) Except as permitted by subsection (e) of this section, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to (i) a business competitor of the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from participation in the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take reasonable and appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rulemaking or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-25 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) Notwithstanding subsections (a) and (c) of this section, a public servant may participate in an official action under any of the following circumstances:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the public servant, the public servant's extended family, or business with which the public servant is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where an official action affects or would affect the public servant's compensation and allowances as a public servant.

(3) Before the public servant participated in the official action, the public servant requested and received from the Commission a written advisory opinion that authorized the participation.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public body records in its minutes that it cannot obtain a quorum in order to take the official action because members are disqualified from acting under this section.

(7) When a public servant notifies, in writing, the Commission that the public servant or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action.

"**§ 138A-13. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-14. Employment and supervision of members of public servant's extended family.**

A public servant shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the public servant to a State or local office or position to which the public servant supervises or manages. A public servant

shall not participate in an action relating to the discipline of a member of the public servant's extended family.

"**§ 138A-15. Other ethics standards.**

Nothing in this Chapter shall prevent constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other State executive boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-16 through 19. [Reserved]**

"Article 3.

"State Ethics Commission.

"**§ 138A-20. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-21. Membership.**

(a) The Commission shall consist of seven members appointed by the Governor. No more than four members may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) One member shall serve an initial term of one year.
(2) Two members shall serve initial terms of two years.
(3) Two members shall serve initial terms of three years.
(4) Two members shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) The Governor shall fill any vacancies in appointments for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
(2) Hold office in any political party.
(3) Participate in or contribute to the political campaign of any public servant or any candidate for a public office as a public servant over which the Commission would have jurisdiction or authority.
(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Commission shall elect a chair and vice-chair annually. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5, 138-6, or 138-7, as applicable.

"**§ 138A-22. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Four members of the Commission constitute a quorum.

"**§ 138A-23. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-24. Powers and duties.**

In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to public servants in complying with this Chapter.

(2) Develop readily understandable forms, policies, rules, and procedures to accomplish the purposes of the Chapter.

(3) Receive and review all statements of economic interests filed with the Commission by prospective and actual public servants and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(4) Investigate alleged violations in accordance with G.S. 138A-25.

(5) Render advisory opinions in accordance with G.S. 138A-26.

(6) Initiate and maintain oversight of ethics educational programs for public servants and their staffs consistent with G.S. 138A-27.

(7) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(8) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants in attending to and performing their duties.

(9) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(10) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

"**§ 138A-25. Investigations by the Commission.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written

request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-24.

(3) The alleged violation of the criminal law by a public servant in the performance of that individual's official duties.

(4) The alleged violation of G.S. 126-14.

(b) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the public servant against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to initiate investigations upon request of any member if there is reason to believe that a public servant has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-26, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(1) of this section.

(e) Public Servant Cooperation With Investigation. – Public servants shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of an individual, the Commission shall provide written notice to the individual who filed the complaint and the public servant as to the fact of the investigation and the charges against the public servant. The public servant shall be given an opportunity to file a written response with the Commission. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint shall be public records.

(h) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints and responses received. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a public hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, the public servant, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Commission on a complaint may be held in closed session, but the decision of the Commission shall be announced in open session.

c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Settlement of Investigations. – The parties may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(j) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a public or private admonishment to the public servant and notify the employing entity, if applicable.

b. Refer the matter to the Governor, the employing entity that appointed or employed the public servant or of which the public servant is a member, or the General Assembly for constitutional officers of the State, for appropriate action, and make recommendations on sanctions under subsection (k) of this section.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Commission shall retain its records or findings in confidence, unless the public servant under inquiry requests in writing that the records and findings be made public. If the Commission later finds that a public servant's subsequent unethical activities were similar to and the subject of an earlier private

admonishment, then the Commission may make public the earlier admonishment and the records and findings related to it.

(k) Recommendations of Sanctions. – If the Commission determines, after proper review and investigation, that action is appropriate, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In formulating appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servants as set forth in Article 2 of this Chapter, including those dealing with conflicts of interest and appearances of conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-38(c).

(9) The public servant's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

If the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. As it deems necessary and proper, the Commission may make referrals to appropriate State officials, including law enforcement officials, for investigation of wrongful conduct by State employees or appointees discovered during the course of a complaint investigation, regardless of whether the individual is a public servant under this Chapter. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over public servants or other State employees or appointees.

(l) Findings and Record. – The Commission shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Commission investigations. In all matters in which the complaint is a public record, the Commission shall ensure that a complete record is made and preserved as a public record.

(m) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-26, shall not limit any authority of the applicable employing entity to discipline the public servant.

(n) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a pubic servant ceases to be a public servant.

(o) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not matters of public record, except as otherwise provided in this section.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-26. Advisory opinions.**

(a) At the request of any public servant, any individual not otherwise the public servant who is responsible for the supervision or appointment of a person who is a public servant, legal counsel for any public servant, any ethics liaison under G.S. 138A-27, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(c) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all public servants upon publication.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 138A-27. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all public servants and their immediate staffs a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs upon their election, appointment or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(b) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(c) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all public servants. Publication under this subsection may be done electronically.

(d) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to public servants. They shall be made available electronically as resource material to public servants and ethics liaisons, upon request.

(e) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-28. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings

regarding individual public servants in that person's agency or on that person's board, or under person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Public Servants set forth in Article 2 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-27 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii)

provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants by their appointing authorities. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-29 through 34. [Reserved]**

"Article 4.

"Public Disclosure of Economic Interests.

"**§ 138A-35. Purpose.**

The purpose of disclosure of the financial and personal interests by public servants is to assist public servants and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the public servant's private interests and the public servant's public duties. It is critical to this process that current and prospective public servants examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the public servant's private interests and the public servant's public duties. Public servants must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the public servant's public position or duties might impact the public servant's private interests. Public servants have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the public servant's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-36. Statement of economic interest; filing required.**

(a) Every public servant subject to this Chapter who is elected, appointed, or employed and entitled to annual compensation from the State of more than forty thousand dollars ($40,000), including one appointed to fill a vacancy in elective office, shall file a statement of economic interest with the Commission prior to the public servant's initial appointment, election, or employment and no later than January 31 every year thereafter. A prospective public servant required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to public servants whose terms have expired but who continue to serve until their replacement is appointed.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days of their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Except as otherwise filed under subsection (a) of this section, a candidate for the Council of State shall file the statement of economic interest at the same place and

in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) The executive director of the State Board of Elections shall forward a certified copy of the statement of economic interest to the Commission for evaluation.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section, the Commission shall furnish to all other public servants the appropriate forms needed to comply with this Article.

"**§ 138A-37. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or is employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records. After becoming public records, statements shall be made available for inspection and copying by any person during normal business hours at the Commission's office.

"**§ 138A-38. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the public servant. Answers must be provided to all questions. The form shall include the following information about the public servant and the public servant's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand

dollars ($10,000) of the prospective or actual public servant, and the public servant's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the public servant or the public servant's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the public servant and the spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each non-publicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the filing public servant shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the filing public servant, the members of the public servant's immediate family are the beneficiaries of a vested trust created, established, or controlled by the public servant, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the public servant, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The filing public servant shall make a good faith effort to list any individual or business entity with which the filing public servant, the public servant's extended family, or any business with which the public servant or a member of the public servant's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the public servant; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a

conflict of interest or appearance of a conflict of interest for the public servant. For each individual or business entity listed under this subsection, the filing public servant shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the public servant is a practicing attorney, an indication of whether the public servant, or the law firm with which the public servant is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedent's estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the public servant or the public servant's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the public servant's extended family, and a list of all gifts,

and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the employing entity.

n. A list of all bankruptcies filed during the preceding five years by the public servant, the public servant's spouse, or any entity in which the public servant, or the public servant's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the public servant of the public servant's immediate family is a member.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.

(4) In addition to the information required to be reported under subdivisions (1), (2), and (3) of this subsection, the filing public servant shall provide in the public servant's statement a list of any felony convictions or any other information that a reasonable person would conclude is necessary either to carry out the purposes of this Chapter or to fully disclose any potential conflict of interest or appearance of conflict. If a public servant is uncertain of whether particular information is necessary, then the public servant shall consult the Commission for guidance.

(5) Each statement of economic interest shall contain sworn certification by the filing public servant that the public servant has read the statement and that, to the best of the public servant's knowledge and belief, the statement is true, correct, and complete. The public servant's sworn certification also shall provide that the public servant has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(6) If the public servant believes a potential for conflict exists, the public servant has a duty to inquire of the Commission as to that potential conflict.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was signed.

(c) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The public servant who submitted the statement.

(2) The head of the agency in which the public servant serves.
(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.
(4) The appointing or hiring authority for those public servants not under the Governor's authority.
(5) The State Board of Elections for those public servants who are elected.

"**§ 138A-39. Failure to file.**

(a) Within 30 days after the date due in accordance with G.S. 138A-36, for every public servant from whom a statement of economic interest has not been received by the Commission, or whose statement of economic interest has been received by the Commission but deemed by the Commission to be incomplete, the Commission shall notify the public servant of the failure to file or complete and shall notify the public servant that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the public servant shall be subject to a fine as provided for in this section.

(b) Any public servant who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any public servant to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-40. Concealing or failing to disclose material information.**

A public servant who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-41. Penalty for false or misleading information.**

A public servant who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any public servant is grounds for disciplinary action. Except as provided in Article 4 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject

to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(f) The State Ethics Commission may seek to enjoin violations of G.S. 138A-9."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

The Codifier of Rules shall publish unedited the rules and advisory opinions issued by the State Ethics Commission under Chapter 138A of the General Statutes in the North Carolina Register as they are received from the State Ethics Commission, in the format required by the Codifier.

The Codifier of Rules shall publish unedited in the North Carolina Administrative Code the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

SECTION 4. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 5. This act becomes effective October 1, 2006, applies to public servants on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

HOUSE BILL 1844:
Executive Branch Ethics Act - 1

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 22, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, Luebke	**Summary by:**	O. Walker Reagan
Version:	Third Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1844 codifies Executive Order No. One that governs ethics in the executive branch. The Act creates the State Ethics Commission and subjects certain executive branch officials, appointees, and employees to economic interest disclosures and creates statutory ethical standards for these public servants. This proposal is a recommendation of the House Select Committee on Ethics and Governmental Reform.***

CURRENT LAW: Most of the regulation of ethics in the executive branch is pursuant to Executive Order No. One (Order) issued by the Governor, most recently on January 1, 2001. This Executive Order is the latest in a succession of similar executive orders governing this subject that have been in effect since January 1977. Under the Governor's limited authority in this area, the Governor has made the order applicable to appointees of the Governor. In addition, the Governor has offered the services of the State Ethics Board (created by the Order) to members of the Council of State and their appointees, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors.

The Order creates the State Ethics Board (Board). It requires covered officials to file statements of economic interests annually. It establishes rules of conduct for covered officials. The Board is authorized to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. The decisions of the Board are advisory, and enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority.

All records of the Board are public, including statements of economic interest filed by perspective appointees prior to their appointment. False statements made on statements of economic interest are not subject to the penalty of perjury. The Governor does not have the authority to require other constitutional officers of the State to participate under the Order or the authority to make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

BILL ANALYSIS: House Bill 1844 codifies the Order. On certain matters the Order does not address, the Act incorporates ethics procedures and processes copied from the Legislative Ethics Act and statutory ethics provisions unique to the NC Board of Transportation. The bill is divided into 4 primary sections.

ARTICLE 1 sets out the purpose of the Act and the applicable definitions. The following definitions are included in Article 1:

Board - Any State executive branch board, commission, council, committee, task force, authority, or similar public body, except for those public bodies that have only advisory authority.

Extended Family – Spouse, descendant, ascendant, or sibling of the public servant, or descendant, ascendant or sibling of the spouse of the public servant.

Public event – An organized gathering of individuals open to the general public or to which at least ten public servants are invited to attend and at least ten employees or members of the principal or person actually attend.

Public servants – All Council of State members, heads of all principal State departments, chief deputies and administrative assistants, confidential assistants and secretaries, employees of the Office of the Governor, persons designated as exempt from the State Personnel Act, voting members of all boards (defined) whether appointed by the executive, legislative, or judicial branch, the UNC Board of Governors, the UNC president and vice-presidents, chancellors, vice-chancellors, members of UNC boards of trustees, members of the State Board of Community Colleges, President and chief financial officer of the Community College System, presidents, chief financial officers and trustees of local community colleges, and contract employees filling any of these positions.

ARTICLE 2 establishes ethical standards for public servants.

G.S. 138A-6 prohibits public servants from using their public position for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising that advances the private interest of the public servant or others. Use of the public servant's title is permitted for political advertising. However, a public servant must not use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the public servant's name, picture, or voice except in emergencies and only if the announcement is related to the public servant's official function.

G.S. 138A-7 restricts gifts that public servants can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinate public servants.

It prohibits public servants from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the State. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, gifts of less than $10, informational materials related to the public servant's duties, expenses associated with a speech or panel related to the public servant's public duties, items or services related to an organization to which the public servant or the public servant's agency belongs, items or services received at an educational conference or meeting, a plaque or nonmonetary recognition memento, gifts accepted on behalf of the State, anything available to the general public or all State employees, anything for which fair market value was paid by the public servant, commercially available loans made on terms not more favorable than available to the public, contractual relationships or business relationships not made for the purpose of lobbying, scholarships on terms not more favorable than scholarships generally available to the public, legal campaign contributions, gifts from family members, and gifts received in conjunction with a wedding, birth, adoption or death, gifts in excess of $10 associated with travel and tourism and industry recruitment under certain conditions, and gifts of less than $100 received in a foreign country as part of a trade mission.

This section also specifies that a gift accepted or solicited in compliance with this section without corrupt intent shall not constitute bribery.

G.S. 138A-8 prohibits public servants from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-9 prohibits public servants from using information gained in their official positions for personal financial gain.

G.S. 138A-10 requires public servants to avoid appearances of conflicts of interest.

G.S. 138A-11 requires public servants to use due diligence to determine if they have a conflict of interest or the appearance of a conflict and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-12 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has a pecuniary interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance. This section sets out numerous exceptions to the restrictions, primarily involving situations where the benefit is no greater to the public servant than the public in general, or when the public servant has received an ethics opinion that no conflict exists.

G.S. 138A-13 establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-14 prohibits a public servant from hiring or supervising a member of his or her extended family.

G.S. 138A-15 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

ARTICLE 3 establishes the State Ethics Commission as an independent, bipartisan commission of seven members appointed by the Governor for 4-year staggered terms. No more than 4 members may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-25 sets out the authority of the Commission to conduct ethics investigations and to hold hearings on alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties. An investigation must be initiated within 60 days of the receipt of the complaint or the complaint is to be dismissed. After a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a pubic or private admonishment, or recommend other sanctions to the employing or appointing authority. Complaints and initial (probable cause) investigations are not public records, but all documents

considered in a hearing are public records. Hearings are held in open session while deliberations are in closed session. Decisions are announced in open session. The Commission has subpoena authority when authorized by the court.

G.S. 138A-26 sets out the authority of the Commission to issue advisory opinions. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public.

G.S. 138A-27 sets out the authority for the Commission to provide for ethics education programs. All public servants and their immediate staffs (individuals who report directly to the public servant) are required to take ethics training within 6 months of the beginning of their employment, election, or appointment, and take a refresher course every 2 years thereafter. Each agency will designate an ethics liaison to coordinate ethics compliance and education within each agency. The Commission is also to publish ethics newsletters from time to time.

G.S. 138A-28 sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws, remind public servants of their ethical obligations, remind their fellow public servants about conflicts of interests and appearances of conflicts of interests, and arrange and promote in-house ethics education programs.

ARTICLE 4 sets out the requirements for filing statements of economic interests.

G.S. 138A-36 requires all public servants, except employees earning $40,000 or less, to file statements of economic interest (SEI) prior to their initial appointment, election, or employment and no later than January 31st of every year thereafter. An exception is made for appointees of newly elected constitutional officers, who have 30 days from the date of appointment or employment to file, when the appointment or employment is done within the first 60 days of the initial term in office. This section sets forth the requirement and procedure for candidates for the Council of State to follow for filing their SEI, in the same manner as is required for candidates for the General Assembly.

G.S. 138A-37 makes statements of economic interest public records when filed, except SEI's of perspective appointees or employees do not become public until the person is appointed or employed.

G.S. 138A-38 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of $10,000 in real estate holdings, personal property, business interests including stocks and bonds, interests in vested trusts, bank accounts, sources of income, attorney's areas of practice; businesses owned in the previous 5 years; gifts in excess of $200 from persons other than extended family members; bankruptcies; and directorships of businesses. The statement also requires lists of memberships and associations in organizations over which the public servant's agency or board has jurisdiction, and felony convictions. Statements of economic interest must be sworn, and false statements would be subject to penalty of

perjury. The Commission is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 138A-39 requires the Commission to notify every public servant who fails to file or complete his or her required SEI within 30 days of the due date. Any public servant who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a $250 fine. Any public servant who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under Article 5.

G.S. 138A-40 makes it a Class 1 misdemeanor for a public servant to knowingly conceal or fail to disclose required information on a SEI.

G.S. 138A-41 makes it a Class H felony for a public servant to provide false or misleading information on a SEI knowing the information to be false or misleading.

ARTICLE 5 sets out the sanctions for violation of the Act. Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment.

SECTION 2 exempts the Commission from all provisions of Chapter 150B, The Administrative Procedure Act, except for Article 4, Judicial Review.

SECTION 3 directs the Codifier of Rules to publish the rules and advisory opinions of the Commission.

SECTION 4 transfers the assets and personnel of the State Ethics Board to the State Ethics Commission.

EFFECTIVE DATE: The Act becomes effective October 1, 2006, and applies to public servants on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007.

** Brad Krehely contributed to the drafting of this summary.*

H1844e3-SMRU

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-30-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rh Schofield	NC Ctr for Nonprofits
Jim Blackburn	NC Association of County Commissioners
Charles Case	Hunton & Williams
Martha Harris	Daily Bulletin
John Bowdish	AstraZeneca
Joe Sewell	NCCUN
Richard O'Brien	PFFPNC
CP Medlin	NCATL
DOUG HERON	NC BAR ASSOCIATION
BILL SCOGGIN	KCLH
Elizabeth Dalton	NCRMA
	NCWM

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-30-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wall	DENR
Kathy Hawkins	Progress Energy
Lisa Piercy	Capitol Group
Paige Ople	Gov's Office
Sally Higgins	Gov's Office
John McMillan	MFS
Susan Valauri	NW
Chris Bond	CAPA
John Martin	Court of Appeals
Jamie Fitzgerald	NCFPC
[illegible]	JDAC, PA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 6-30-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	
[signature]	

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

CORRECTED NOTICE
SEE TIME CHANGE

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

DAY	DATE	TIME	ROOM
Wednesday	July 5, 2006	100 PM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 88	Electoral Fairness Act.	Representative Miller
HB 1248	Identity Theft Protection Act of 2005.	Representative Goforth Representative Kiser Representative Ray Representative Sutton
HB 1846	Contribution Changes.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 1847	Treasurer Training.	Representative Ross Representative Hackney Representative Howard
HB 1896	Sex Offender Registration Changes.	Representative Goforth Representative Farmer-Butterfield Representative Ray Representative Glazier
SB 1523	2006 Technical Corrections Act.	Senator Hartsell

Judiciary 1 Committee

July 5, 2006 p.m.

Minutes

Senator Clodfelter, Chair called the meeting to order at 1:05 p.m. with thirteen members present. He introduced Pages Cameron Lee, from Cary, NC, Caroline Fraley and Annsley Stroupe from Cherryville, NC, Will Fanning, from Fuquay-Varina, NC and Carter Devlin, from Raleigh, NC.

Senator Clodfelter stated that HB-1846 would be removed from the agenda to be heard at a future time.

SB-1523 (2006 Technical Corrections Act) Committee Substitute was introduced by Senator Clodfelter. He stated that the bill would be discussed, but displaced at this time. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Ms. Bly Hall, NC Attorney General's office, Statutes Commission explained sections of the bill. Bill displaced.

HB-1248 (Identity Theft Protection Act of 2005) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Walker Reagan explained the bill would amend the Identity Theft Protection Act of 2005 to require governmental entities to report security breaches as private entities are required to report, clarifies that redacted personal information is not public records, and adds the Office of the Secretary of State to the clerks of court and register of deeds as offices that do not need to review all records filed with their offices and redact any identifying information contained therein. (See attached Bill Summary for further information). Mr. Haley Montgomery, Deputy Secretary, NC Secretary of State's office, Mr. Josh Stein, NC Attorney General's office, Mr. Chip Killian, NC Register of Deeds, and Mr. Rob Thompson, NC Public Research Group Association, spoke on the bill. Senator's Harry Brown, Jerry Tillman, Phillip Berger and Tony Rand had questions. Senator Tony Rand offered an Amendment to the bill. All members voted yes. Amendment Adopted. (See attached Amendment) Senator Clodfelter stated the bill would be displaced, to be voted on at the next Judiciary-1 meeting.

HB-1896 (Sex Offender Registration Changes) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney Hal Pell explained that the bill amends the sex offender registration statutes, amends criminal laws, imposes electronic monitoring requirements, and appropriates funds for the purposes of the act. (See Bill Summary for further information) Senator Rand offered an Amendment to the bill. (See attached Amendment), and moved for adoption of the Amendment. All members voted yes. Amendment adopted. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried. Bill re-referred to Finance Committee.

HB-88 (Electoral Fairness Act) Committee Substitute was introduced by Senator Clodfelter. Senator Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney Bill Gilkeson explained changes to the bill. Representative Deborah Ross spoke on the bill, and said the bill would go back to the House Election Laws Committee. Senator's Tony Rand and Janet Cowell had questions. The questions were answered by Rep. Ross and Mr. Gilkeson. Mr. Hart Matthews, NC Green Party, and Ms. Barbara Howell, NC Libertarian Party spoke on the bill. Senator Clodfelter stated that the bill would be displaced at this time.

Being no further business the meeting adjourned at 1:45 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

HOUSE BILL 1248:
Amend Identity Theft Protection Act of 2005.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 5, 2006
Introduced by:	Reps. Goforth, Sutton, Kiser, Ray	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition S1248-CSRU-96		Committee Co-Counsel

SUMMARY: ***The Senate Proposed Committee Substitute for House Bill 1248 would amend the Identity Theft Protection Act of 2005 to require governmental entities to report security breaches as private entities are required to report, clarifies that redacted personal information is not public records, and adds the Office of the Secretary of State to the clerks of court and register of deeds as offices that do not need to review all records filed with their offices and redact any identifying information contained therein.***

CURRENT LAW: Current law requires private entities that possess identifying information, as defined in the law, to notify affected parties if security is breached on confidential identifying information under their control. This same requirement does not apply to governmental entities that suffer the same kind of breach. The law requires governmental agencies to segregate identifying information in the public records and not include this information on public records given to the public. Clerks of court and registers of deeds are not require to purge existing databases of identifying information, but are required to redact that information when specifically requested by the person whose identifying information is contained on a public record under the control of the clerk or register of deed.

BILL ANALYSIS: Section 1 of the bill makes two changes relative to obligations of governmental entities regarding personal identifying information held by the entity.

The new G.S. 132-1.10(c1) requires governmental entities to follow the same notification requirements applicable to non-governmental entities, in the event that security is breached with regards to personal identifying information held by the governmental entity.

The new G.S. 132-1.10(i) clarifies that identifying information held by a governmental entity that is segregated or redacted from a public record is not a public record, but the record from which the identifying information is removed remains a public record.

Sections 2 through 6 adds the Office of the Secretary of State to the list of public registry that includes the registers of deeds and clerks of court for which databases containing identifying information do not have be purged of that information, except when expressly requested by the person whose identifying information is in the public records. The section also prohibits a person from filing a document with the Secretary of State contains identifying information, except under special circumstances.

EFFECTIVE DATE: Section 1 of the bill becomes effective October 1, 2006. The remainder of the bill is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Friday, July 07, 2006

Senator CLODFELTER,
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) **1896** Sex Offender Registration Changes.

Draft Number:	PCS 80670
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1523*
PROPOSED COMMITTEE SUBSTITUTE S1523-CSRU-100 [v.2]

7/5/2006 10:19:51 AM

Short Title: 2006 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-10(b) reads as rewritten:

"(b) All summons served personally or by mail under this section or under G.S. 9-11 shall inform the prospective juror that persons ~~65~~72 years of age or older are entitled to establish in writing exemption from jury service for good cause, shall contain a statement for claiming such exemption and stating the cause and a place for the prospective juror's signature, and shall state the mailing address of the clerk of superior court and the date by which such request for exemption must be received."

SECTION 2.(a) G.S. 10B-20(1) reads as rewritten:

"(l) A notary public required to comply with the provisions of ~~subsection (g)~~subsection (i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 2.(b) G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The state and county of commissioning of the registrant.

(3) The expiration date of the registrant's notary commission.

(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.

(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.

(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.

(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in ~~subsection (7),~~ subdivision (7) of this subsection, which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule."

SECTION 3. G.S. 15A-615(a) reads as rewritten:

"(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral ~~intercourse,~~ intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or ~~less,~~ less; or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years ~~old,~~ old; the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections:

(1) Chlamydia;

(2) Gonorrhea;

(3) Hepatitis B;

(3a) Herpes;

(4) HIV; and

(5) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed."

SECTION 4. G.S. 41-47(c) reads as rewritten:

"(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written ~~notice~~ notice, addressed to the registering entity,

from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article."

SECTION 5. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

(1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

(5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...."

SECTION 6. G.S. 45-38 reads as rewritten:

"**§ 45-38. Recording of foreclosure.**

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure that includes the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of the original parties to the original instrument foreclosed, and the recording data for the instrument foreclosed. A notice of ~~forfeiture~~ foreclosure shall be indexed by the register of deeds in accordance with ~~G.S. 161.14.1.~~G.S. 161-14.1."

SECTION 7.(a) G.S. 47C-3-116(e) reads as rewritten:

"(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 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.~~ G.S. 47C-4-117."

SECTION 7.(b) G.S. 47C-3-121(2)b. reads as rewritten:

"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"."

SECTION 8.(a) G.S. 47F-1-102(c) reads as rewritten:

"(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), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and ~~G.S. 47C-3-121~~ G.S. 47F-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, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 8.(b) G.S. 47F-3-121(2)b. reads as rewritten:

"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"**."

SECTION 9.(a) G.S. 55-11-04(b) reads as rewritten:

"(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the ~~parent~~ surviving corporation shall, within 10 days after the effective

date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective."

SECTION 9.(b) G.S. 55-11-05(d) reads as rewritten:

"(d) In the case of a merger ~~or share exchange~~ pursuant to G.S. 55-11-07 or ~~G.S. 55-11-09,~~a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and ~~(b)~~(a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable.

SECTION 9.(c) G.S. 55A-11-06(c) reads as rewritten:

"(c) This section does not limit the power of a foreign corporation to acquire all or part of the ~~shares~~ memberships of one or more classes ~~or series~~ of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 9.(d) G.S. 57C-9A-02(a2) reads as rewritten:

"(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and ~~(2)~~(1a) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document."

SECTION 10. G.S. 58-47-140 reads as rewritten:

"**§ 58-47-140. Other provisions of this Chapter.**

The following provisions of this Chapter apply to workers' compensation self-insurance groups that are subject to this Article:

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19, 30, 33, 34, and 63 of this ~~Chapter apply to groups.~~ Chapter."

SECTION 11. G.S. 90-270.67 reads as rewritten:

"**§ 90-270.67. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

(1a) Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) ~~"Occupational therapy" means a~~ Occupational therapy. – A health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article."

SECTION 12. G.S. 90B-9 reads as rewritten:

"**§ 90B-9. Renewal of certificates and licenses.**

(a) All certificates and licenses shall be effective upon date of issuance by the Board, and shall be renewed on or before the second June 30 thereafter.

(b) All certificates and licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each certificate or license, the Board shall mail a notice and application for renewal to the certificate holder or licensee. Prior to the expiration date, the application shall be returned properly completed, together with a renewal fee established by the Board pursuant to ~~G.S. 90B-6.2(a)(5)~~ G.S. 90B-6.2(a)(4) and evidence of completion of the continuing education requirements established by the Board pursuant to G.S. 90B-6(g), upon receipt of which the Board shall renew the certificate or license. If a certificate or license is not renewed on or before the expiration date, an additional fee shall be charged for late renewal as provided in ~~G.S. 90B-6.2(a)(6).~~ G.S. 90B-6.2(a)(5).

(c) A certificate or license issued under this Chapter shall be automatically suspended for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate a certificate or license suspended under this subsection upon payment of a reinstatement fee as provided in ~~G.S. 90B-6.2(a)(7)~~ G.S. 90B-6.2(a)(6) and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. The Board shall have exclusive jurisdiction to investigate alleged violations of this Chapter by any person whose certificate or license has been suspended under this subsection and, upon proof of any violation of this Chapter, the Board may take disciplinary action as provided in G.S. 90B-11.

(d) Any person certified or licensed and desiring to retire temporarily from the practice of social work shall send written notice thereof to the Board. Upon receipt of such notice, his or her name shall be placed upon the nonpracticing list and he or she

shall not be subject to payment of renewal fees while temporarily retired. In order to reinstate certification or licensure, the person shall apply to the Board by making a request for reinstatement and paying the appropriate fee as provided in G.S. 90B-6.2."

SECTION 13. G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

~~Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.~~

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

SECTION 14. G.S. 113-270.3(d) reads as rewritten:

"(d) Any individual who possesses any of the lifetime sportsman licenses established by G.S. 113-270.1D(b) may engage in specially regulated activities without the licenses required by subdivisions (1), (2), (3), and (5) of subsection (b) of this section. Any individual possessing an annual sportsman license established by G.S. 113-270.1D(a) or a lifetime or annual comprehensive hunting license established by G.S.113-270.2(c)(2) or (5) may engage in specially regulated activities without the licenses required by subdivisions ~~(1) and (3)~~(1), (3) and (5) of subsection (b) of this section."

SECTION 15. G.S. 115C-499.3(a) reads as rewritten:

"(a) Subject to the amount of net income available under G.S. 18C- 164(b)(2), a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs."

SECTION 16.(a) G.S. 120-4.21(c), as it applies to members retiring before September 1, 2005, reads as rewritten:

"(c) Limitations applicable to members retiring before September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary"."

SECTION 16.(b) G.S. 120-4.21(c), as it applies to members retiring on or after September 1, 2005, is recodified as G.S. 120-4.21(d) and reads as rewritten:

"(d) Limitations applicable to members retiring on or after September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of the member's "highest annual salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system."

SECTION 17.(a) G.S. 130A-309.10 (f)(7) reads as rewritten:

"(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~of the disposal of~~ on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings."

SECTION 17.(b) This section is effective October 1, 2009.

SECTION 18.(a) G.S. 135-3(8)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part time, temporary, interim, or on a fee for service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the

balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

~~in full-time capacity that exceeds fifty percent (50%) of the applicable workweek.~~"

SECTION 18.(b) This section is effective June 30, 2007.

SECTION 19. The catchline of G.S. 158-33 reads as rewritten:

"**§ 158-33. Creation of ~~Global TransPark Development Zone.~~North Carolina's Eastern Region.**"

SECTION 20.(a) The introductory language of Section 5 of S.L. 2005-123 reads as rewritten:

"**SECTION 5.** G.S. 47-46.1 and G.S. 47-46.2 read ~~reads~~ as rewritten:".

SECTION 20.(b) This section is effective October 1, 2005.

SECTION 21. S.L. 2005-123 is amended by adding a new section to read:

"**SECTION 9.1.** The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 22. Section 3 of S.L. 2005-127 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. For each water and sewer authority organized under Article 1 of Chapter ~~162~~ 162A of the General Statutes, Section 2 of this act applies on the first day of the fiscal year of the authority that begins on or after the date this act becomes effective."

SECTION 23. Section 1 of S.L. 2005-133 reads as rewritten:

"**SECTION 1.** Under the Occupational Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term "Commission" for the term "Board" wherever that term appears in the General Statutes in relation to the Act. The Revisor of Statutes is also authorized to insert the words "North Carolina Occupational" in front of the phrase "Safety and Health Review Commission" wherever that phrase appears in the General Statutes in relation to the Act."

SECTION 24(a). Section 7(a) of S.L. 2005-192 is codified as G.S. 36C-11-1106, and reads as rewritten:

"**§ 36C-11-1106. Application to existing relationships.**

(a) ~~Section 2 of this act becomes effective January 1, 2006, and except~~Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, this Chapter applies to (i) all trusts created before, on, or after ~~that date;~~January 1, 2006; (ii) all judicial proceedings concerning trusts commenced on or after ~~that date;~~January 1, 2006; and (iii) judicial proceedings concerning trusts commenced before ~~that date~~January 1, 2006, unless the court finds that application of a

particular provision of ~~Chapter 36C of the General Statutes~~this Chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of ~~Chapter 36C of the General Statutes~~this Chapter does not apply and the superseded law applies.

(b) Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, any rule of construction or presumption provided in ~~Chapter 36C of the General Statutes~~ this Chapter applies to trust instruments executed before ~~the effective date of Section 2 of this act~~ January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~ this Chapter, an act done before ~~the effective date of Section 2 of this act~~January 1, 2006, is not affected by ~~Chapter 36C of the General Statutes.~~this Chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before ~~the effective date of Section 2 of this act,~~January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded."

SECTION 24.(b) Section 7(b) of S.L. 2005-192 reads as rewritten:

"**SECTION 7.(b)** ~~Section 1 and Sections 3 through 5~~Sections 1 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law."

SECTION 24.(c) The Revisor of Statutes is authorized to cause to be printed along with G.S. 36C-11-1106, as enacted by this section, all relevant portions of the Official Commentary to this section of the Uniform Trust Code and all explanatory comments of the drafters as the Revisor deems appropriate.

SECTION 25. Section 7 of S.L. 2005-351 reads as rewritten:

"**SECTION 7.** This act becomes effective October 1, 2005, and applies to powers of attorney created ~~before and~~ on, before, or after that date."

SECTION 26. S.L. 2006-11 is amended by adding a new section to read:

"**SECTION 2.1.** The Revisor of Statutes shall cause to be printed along with G.S. 25-9-705, as amended by this act, all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 27. This act is effective when it becomes law.

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: July 5, 2006

RE: Senate Bill 1523 (2006 Technical Corrections Act)

General Comments

Sections 1 through 26 the proposed committee substitute for this bill contains corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments correct redlining, grammatical, stylistic, punctuation, and other obvious drafting errors, conform terminology and language and make other conforming amendments, update or correct names and statutory references, alter punctuation to make a provision more clear, make two obvious clarifying amendments, codify two applicability provisions that are long-term or permanent rather than transitional, and authorize the printing of official and drafters comments.

Specific Comments

Section 1. S.L. 2005-149 amended G.S. 9-6.1 to raise the age at which a person summoned for jury duty could request an exemption on the grounds of age from 65 to 72. This section makes a conforming change to G.S. 9-10(b), which requires the summons to inform recipients of this exemption.

Section 2. This section makes two technical corrections in the new notary chapter, Chapter 10B of the General Statutes. Subsection (a) amends G.S. 10B-20(l) to correct a cross-reference ("subsection (g)" should be "subsection (i)"). Subsection (b) amends G.S. 10B-106(d) to correct the terminology ("subsection" here should be "subdivision") and the style of the cross-reference.

Section 3. This section amends the introductory language of G.S. 15A-615(a) by changing the commas between the offenses listed in this part of the subsection to semicolons to make the paragraph easier to read.

Section 4. This section amends G.S. 41-47(c) to specify that when a claimant to a security registered in TOD form wishes to contest the transfer to the TOD beneficiary after the security owner's death, the written notice the claimant must give the registering entity must actually be addressed to that entity.

Section 5. G.S. 45-37(a)(1), (5), and (6) were enacted as part of S.L. 2005-123, which substantially revised the law dealing with mortgage satisfactions. These three subdivisions were intended to preserve the effectiveness of security instruments that were satisfied of record in accordance with the former law. This section amends these three subdivisions to make it clear that they apply only to security instruments that were satisfied of record before the effective date of the revision by S.L. 2005-123 (October 1, 2005).

Section 6. This section amends G.S. 45-38 to correct an obvious error in terminology. The reference to a "notice of forfeiture" should be to a "notice of foreclosure". The section also corrects the style of a citation ("G.S. 161-14.1", not "G.S. 161.14.1").

Section 7. Subsection (a) of this section amends G.S. 47C-3-116(e) to correct a citation (from a section in the chapter on planned communities to the equivalent section in Chapter 47C, on condominiums). Subsection (b) deletes an extra word in G.S. 47C-3-121(2)b. (see essentially the same amendment in the next section).

Section 8. Subsection (a) of this section amends G.S. 47F-1-102(c) to correct a citation (from a section in the chapter on condominiums to the equivalent section in Chapter 47F, on planned communities). Subsection (b) deletes an extra word in G.S. 47F-3-121(2)b. (see essentially the same amendment in the preceding section).

Section 9. This section amends four different business entity statutes. Subsection (a) amends G.S. 55-11-04(b) to correct the terminology. The current wording assumes that the parent corporation in a merger between a parent and its subsidiary under this provision will be the surviving corporation, and this is not necessarily the case. Subsection (b) amends G.S. 55-11-05(d) to make the language parallel to similar language in G.S. 55-11-06(c). Subsection (c) amends G.S. 55A-11-06(c) to correct the terminology; nonprofit corporations organized under Chapter 55A of the General Statutes may have members but they do not have shareholders or issue shares. Subsection (d) corrects a cross-reference in G.S. 57C-9A-02(a2).

Section 10. This section amends G.S. 58-47-140 to delete extra language that was inadvertently not deleted when the section was reformatted last year by Section 15 of S.L. 2005-215, when the current introductory language was added.

Section 11. This section amends G.S. 90-270.67 to conform the style of the definition of "occupational therapy" to the style of every other definition in G.S. 90-270.67.

Section 12. This section corrects three cross-references in G.S. 90B-9.

Section 13. This section makes a conforming amendment to G.S. 113-133.1(e) by deleting the entry for Harnett County. The local act reflected in that entry, Chapter 636 of the 1977 Session Laws, was repealed last year by S.L. 2005-28.

Section 14. This section makes a conforming amendment to G.S. 113-270.3(d) to add a reference to G.S. 113-270.3(b)(5), bringing G.S. 113-270.3(d) into conformity with G.S. 113-270.2. Waterfowl privileges were added to the comprehensive hunting licenses by S.L. 1999-399.

Section 15. This section amends G.S. 115C-499.3(a) to insert the missing word "under".

Section 16. G.S. 120-4.21(c) was amended last year in S.L. 2005-276 (Section 29.30A(j)), but these amendments were restricted to members retiring on or after September 1, 2005. This section codifies both versions of the subsection and also codifies the applicability language for each.

Section 17. This section amends G.S. 130A-309.10(f)(7) to delete "garbage language" from the version of that subdivision that will become effective October 1, 2009. The subdivision was amended in 2005 by two different acts, S.L. 2005-348, s. 3, and S.L. 2005-326, ss. 2 and 3, effective on different dates. The amendments with the latest effective date did not take into account amendments in the other act, with the result that when the amendments with the latest effective date take effect on October 1, 2009, there will be extra, unneeded, words in the subdivision that should be deleted.

Section 18. G.S. 135-3(8)c. was amended multiple times in 2005, with the result that the version effective June 30, 2007, contains "garbage language" that should be deleted. This section deletes this "garbage language" effective June 30, 2007.

Section 19. This section makes a conforming amendment to the catchline of G.S. 158-33 to update the name of the Global TransPark Development Zone to North Carolina's Eastern Region. This name change was made by the General Assembly last year in S.L. 2005-364, but the name was not changed in this one place.

Section 20. Subsection (a) of this section amends the introductory language of Section 5 of S.L. 2005-123 to include a reference to G.S. 47-46.2, which is also amended in Section 5. Subsection (b) makes this section effective on the effective date of S.L. 2005-123.

Section 21. This section amends S.L. 2005-123 to add a new section that authorizes the Revisor of Statutes to print the Official Comments to the Uniform Residential Mortgage Satisfaction Act and comments of the drafters of S.L. 2005-123 in the appropriate locations in the General Statutes.

Section 22. This section amends the effective date and applicability section of S.L. 2005-127 by correcting a citation ("162" should have been "162A").

Section 23. This section amends Section 1 of S.L. 2005-133 to complete the general authorization for the Revisor of Statutes to update the name of the Safety and Health Review Board to the North Carolina Occupational Safety and Health Review Commission.

Section 24. S.L. 2005-192 enacted a North Carolina version of the Uniform Trust Code, with conforming amendments. Section 7(a) of S.L. 2005-192 contains effective date and applicability provisions for Section 2 of S.L. 2005-192 (which contains the Uniform Trust Code, codified as Chapter 36C of the General Statutes); Section 7(b) contains effective date provisions for the remainder of S.L. 2005-192. Although some provisions in Section 7(a) are truly transitional, having only a limited lifespan, others, such as the applicability of the new act to existing trusts and trust documents, have permanent application and should be codified.

Subsections (a) and (b) of this section amend Section 7(a) of S.L. 2005-192 to move the effective date of Section 2 of S.L. 2005-192 from Section 7(a) to Section 7(b), leaving only applicability provisions in Section 7(a). Subsection (a) of this section codifies Section 7(a) of S.L. 2005-192 as G.S. 36C-11-1106. Subsection (c) of this section authorizes the Revisor of Statutes to print the Official Comment to the applicability section of the Uniform Trust Code and the drafters comment to Section 7(a).

Section 25. This section amends the applicability language in Section 7 of S.L. 2005-351 to fill a time gap.

Section 26. This section amends S.L. 2006-11 to add authorization for the Revisor of Statutes to print drafters comments for the amendment to G.S. 25-9-705 made by S.L. 2006-11.

Section 27. This section is the effective date section for the entire bill ("when it becomes law").

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1248*

Committee Substitute Favorable 5/19/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1248-CSRU-96 [v.3]

7/5/2006 11:50:14 AM

Short Title: Amend Identity Theft Protection Act of 2005. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10 is amended by adding the following new subsections to read:

"(c1) If an agency of the State or its political subdivisions, or any agent or employee of a government agency, experiences a security breach, as defined in Article 2A of Chapter 75 of the General Statutes, the agency shall comply with the requirements of G.S. 75-65.

...

(i) Identifying information, as described in subsection (b)(5) of this section shall not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information."

SECTION 2. G.S. 132-1.10(d) reads as rewritten:

"(d) No person preparing or filing a document to be recorded or filed in the official records ~~by~~ of the register of deeds, the Department of the Secretary of State or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 3. G.S. 132-1.10(e) reads as rewritten:

"(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of ~~deeds.~~deeds of the Department of the Secretary of State. The register of deeds or the Department of the Secretary of State may not reject an instrument presented for recording because the instrument contains an individual's personal information."

SECTION 4. G.S. 132-1.10(f) reads as rewritten:

"(f) Any person has the right to request that the Department of the Secretary of State, a register of deeds or clerk of court remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or court to display public records by the Department of the Secretary of State, the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the Department of the Secretary of State, the register of deeds, the clerk of court, their staff, or upon order of the court. The Department of the Secretary of State, the register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 5. G.S. 132-1.10(g) reads as rewritten:

"(g) ~~A~~ The Department of the Secretary of State, a register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer

taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request the Department of the Secretary of State, a register of deeds or clerk of court to remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 6. G.S. 132-1.10(h) reads as rewritten:

"(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to the Department of the Secretary of State, a register of deeds or clerk of court or to ~~his or her agent~~their agents for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court."

SECTION 7. Section 1 of this act becomes effective October 1, 2006. The remainder of this act is effective when the act becomes law.

Final Ed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1896

Corrected Copy 5/17/06

Committee Substitute Favorable 6/12/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1896-PCS80670-RK-66

Short Title: Sex Offender Registration Changes. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO (1) AMEND THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS; (2) TO IMPLEMENT A SATELLITE-BASED MONITORING SYSTEM TO ASSIST WITH THE SUPERVISION OF CERTAIN SEX OFFENDERS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE; (3) TO EXPAND THE DEFINITION OF 'SEXUAL CONTACT' AS IT RELATES TO THE OFFENSE OF SEXUAL BATTERY; AND (4) TO AUTHORIZE THE DEPARTMENT OF CORRECTION TO STUDY THE MENTAL HEALTH TREATMENT PRACTICES OF SEX OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), 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), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking

indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) Part 2 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.8A. Notification requirement for out-of-county employment if temporary residence established.**

(a) Notice Required. -- A person required to register under G.S. 14-208.7 shall notify the sheriff of the county with whom the person is registered of the person's place of employment and temporary residence, which includes a hotel, motel, or other transient lodging place, if the person meets both of the following conditions:

(1) Is employed or carries on a vocation in a county in the State other than the county in which the person is registered for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, on a part-time or full-time basis, with or without compensation or government or educational benefit.

(2) Maintains a temporary residence, including in that county for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year.

(b) Time Period. – The notice required by subsection (a) of this section shall be provided within 48 hours after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for more than 10 business days within a 30-day period, or within 10 days after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for an aggregate period exceeding 30 days in a calendar year.

(c) Notice to Division. – Upon receiving the notice required under subsection (a) of this section, the sheriff shall immediately forward the information to the Division. The Division shall notify the sheriff of the county where the person is working and maintaining a temporary residence of the person's place of employment and temporary address in that county."

SECTION 4.(b) This section becomes effective June 1, 2007.

SECTION 5.(a) G.S. 14-208.7 reads as rewritten:

"**§ 14-208.7. Registration.**

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of at least 10 years following the date of initial county registration.~~release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.~~

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph;

(4) The person's fingerprints;

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student; and

(6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry.

(d) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 5.(b) This section becomes effective December 1, 2006.

SECTION 6.(a) G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register ~~moves~~ intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least 10 days before the date the person intends to leave this State to establish residence in another state or jurisdiction.~~provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the~~ The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

(1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.

(2) The sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the ~~change of address~~ information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within 10 days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person ~~shall~~ shall, within 10 days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new ~~status not later than the tenth day after the change to the sheriff of the county with whom the person registered.~~status. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person ~~shall~~ shall, within 10 days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

The information in the county registry shall be verified ~~annually~~ semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address."

SECTION 7.(b) This section becomes effective December 1, 2006.

SECTION 8.(a) G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

(1) Fails to ~~register.~~register as required by this Article.

(2) Fails to notify the last registering sheriff of a change of ~~address.~~address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(7) Fails to report in person to the sheriff's office as required by G.S. 14-208.7, 14-208.9, and 14-208.9A.

(8) Reports his or her intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff in the manner required by G.S. 14-208.9.

(9) Fails to notify the registering sheriff of out-of-county employment if temporary residence is established as required under G.S. 14-208.8A."

SECTION 8.(b) This section becomes effective June 1, 2007, and applies to offenses committed on or after that date.

SECTION 9.1.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.**

(a) It shall be unlawful and a Class H felony for any person who has reason to believe that an offender is in violation of the requirements of this Article, and who has the intent to assist the offender in eluding arrest, to do any of the following:

(1) Withhold information from, or fail to notify, a law enforcement agency about the offender's noncompliance with the requirements of this Article, and, if known, the whereabouts of the offender.

(2) Harbor, attempt to harbor, or assist another person in harboring or attempting to harbor, the offender.

(3) Conceal or attempt to conceal, or assist another person in concealing or attempting to conceal, the offender.

(4) Provide information to a law enforcement agency regarding the offender that the person knows to be false information.

(b) This section does not apply if the offender is incarcerated in or is in the custody of a local, State, private, or federal correctional facility."

SECTION 9.1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. ~~Termination~~ Request for termination of registration requirement.**

(a) A person required to register under this Part who has served his or her sentence may petition the superior court in the district where the person resides to terminate the registration requirement~~The requirement that a person register under this Part automatically terminates~~ 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article.

(a1) The court may grant or deny the relief if:

(1) The petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence,

(2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable

to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and

(3) The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

(a2) The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied.

(a3) If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the clerk of court shall forward a certified copy of the order to the Division to have the person's name removed from the registry.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is ~~terminated.~~terminated by the court under subsection (a) of this section."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Part 3 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.24A. Sexual predator prohibited from working or volunteering for child-involved activities; organizations.**

(a) It shall be unlawful for any person required to register under this Part because he or she is classified as a sexually violent predator, is a recidivist, or is a person convicted of an aggravated offense, to work for any person, with or without compensation, at any business, school, day care center, park, playground, or other place where the employer conducts any activity where a minor is present and the person's responsibilities include instruction, supervision, or care of a minor or minors.

(b) A violation of this section is a Class F felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to offenses on or after that date.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(5) 'Sexual contact' means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, ~~or~~ (ii) a person touching another person with their own sexual organ, anus, breast, groin, or ~~buttocks.~~buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. G.S. 14-208.28 reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

The information provided to the sheriff shall be verified ~~annually~~ semiannually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration ~~date,~~date and six months after that date, the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form."

SECTION 14. G.S. 15A-1341 is amended by adding a new subsection to read:

"(d) Search of Sex Offender Registration Information Required When Placing a Defendant on Probation. – When the court places a defendant on probation, the probation officer assigned to the defendant shall conduct a search of the defendant's name or other identifying information against the registration information regarding sex offenders compiled by the Division of Criminal Statistics of the Department of Justice in accordance with Article 27A of Chapter 14 of the General Statutes. The probation officer may conduct the search using the Internet site maintained by the Division of Criminal Statistics."

SECTION 15.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 5. Sex Offender Monitoring.

"**§ 14-208.33. Establishment of program; creation of guidelines; duties.**

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor two categories of offenders as follows:

(1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.

(2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) based on the

Department's risk assessment program requires the highest possible level of supervision and monitoring. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(b) In developing the guidelines for the program, the Department shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Department determines that an active program will not work as provided by this section, then the Department shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

(1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Department may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part.

"**§ 14-208.34. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

(a) Any person described by G.S. 14-208.33(a)(1) shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the registration period imposed under G.S. 14-208.23 which is the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.35.

(b) Any person described by G.S. 14-208.33(a)(2) who is ordered by the court to enroll in a satellite-based monitoring program shall do so with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the period of time ordered by the court.

"**§ 14-208.35. Lifetime registration offenders required to submit to satellite-based monitoring for life and to continue on unsupervised probation upon completion of sentence.**

Notwithstanding any other provision of law, when the court sentences an offender who is in the category described by G.S. 14-208.33(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll in a satellite-based

monitoring program, the court shall also order that the offender, upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, continue to be enrolled in the satellite-based monitoring program for the offender's life and be placed on unsupervised probation unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.36.

"**§ 14-208.36. Request for termination of satellite-based monitoring requirement.**

(a) An offender described by G.S. 14-308.33(a)(1) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence.

(b) Upon receipt of the request for termination, the Commission shall review documentation contained in the offender's file and the statewide registry to determine whether the person has complied with the provisions of this Article. In addition, the Commission shall conduct fingerprint-based state and federal criminal history record checks to determine whether the person has been convicted of any additional reportable convictions.

(c) If it is determined that the person has not received any additional reportable convictions during the period of satellite-based monitoring and the person has substantially complied with the provisions of this Article, the Commission may terminate the monitoring requirement if the Commission finds that the person is not likely to pose a threat to the safety of others.

(d) If it is determined that the person has received any additional reportable convictions during the period of satellite-based monitoring or has not substantially complied with the provisions of this Article, the Commission shall not order the termination of the monitoring requirement.

(e) The Commission shall not consider any request to terminate a monitoring requirement except as provided by this section. The Commission has no authority to consider or terminate a monitoring requirement for an offender described in G.S. 14-208.33(a)(2).

"**§ 14-208.37. Failure to enroll; tampering with device.**

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class F felony.

(b) Any person who intentionally tampers with, removes, or vandalizes a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class E felony.

"**§ 14-208.38. Fees.**

(a) There shall be a one-time fee of ninety dollars ($90.00) assessed to each person required to enroll pursuant to this Part. The court may exempt a person from

paying the fee only for good cause and upon motion of the person placed on satellite-based monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (c) of this section to determine the payment schedule. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system.

(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction.

(c) If a person placed on supervised probation, parole, or post-release supervision is required as a condition of that probation, parole, or post-release supervision to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule."

SECTION 15.(b) G.S. 15A-1343(b2) reads as rewritten:

"(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

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

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(1).

(8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.33(a)(2), and the Department of Correction, based on the Department's risk assessment program,

recommends that the defendant submit to the highest possible level of supervision and monitoring.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised ~~probation.~~probation, except as provided in G.S. 14-208.35."

SECTION 15.(c) G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.33(a)(1)."

SECTION 15.(d) G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

"(5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(2)."

SECTION 15.(e) G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is in the category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2) violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation."

SECTION 15.(f) G.S. 15A-1368.2 is amended by adding a new subsection to read:

"(c1) Notwithstanding subsection (c) of this section, a person required to submit to satellite-based monitoring pursuant to G.S. 15A-1368.4(b1)(6) shall continue to participate in satellite-based monitoring beyond the period of post-release supervision until the Commission releases the person from that requirement pursuant to G.S. 14-208.36."

SECTION 15.(g) G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(1).

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(2)."

SECTION 15.(h) G.S. 15A-1374 is amended by adding a new subsection to read:

"(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is in a category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2), the Commission must require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 15.(i) G.S. 143B-266 is amended by adding a new subsection to read:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by G.S. 14-208.35. The Commission may grant or deny those requests in compliance with G.S.14-208.35."

SECTION 15.(j) The Department of Correction shall have the program enacted by subsection (a) of this section established by January 1, 2007.

SECTION 15.(k) This subsection is effective on July 1, 2006. Of the funds appropriated by Senate Bill 1741 as enacted by the 2005 General Assembly, Regular Session 2006, to the Department of Correction for the 2006-2007 fiscal year the sum of one million three hundred seven thousand two hundred eighteen dollars ($1,307,218) shall be used to implement the sex offender monitoring program established pursuant to this section. Notwithstanding G.S. 143-23(a2), the Department of Correction may use available funds to implement this program during the 2006-2007 fiscal year if expenditures are anticipated to exceed the amount appropriated by this act. Prior to exceeding the amount appropriated for this program by this act, the Department of Correction shall report to the Joint Legislative Commission on Governmental Operations.

SECTION 15.(l) Unless otherwise provided in the section, this section is effective when it becomes law and applies to offenses committed on or after that date. This section also applies to any person sentenced to intermediate punishment on or after that date and to any person released from prison by parole or post-release supervision on or after that date. This section also applies to any person who completes his or her sentence on or after the effective date of this section who is not on post-release supervision or parole. However, the requirement to enroll in a satellite-based program is not mandatory until January 1, 2007, when the program is established.

SECTION 16. The Department of Correction shall issue a Request for Proposal (RFP) for electronic monitoring equipment and monitoring services for the Division of Community Corrections' electronic house arrest and electronic monitoring programs. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services. The Department shall design the RFP to use the most recent, cost-effective technology available; the Department shall not restrict vendors to the specifications of the equipment currently utilized by the Department.

The Department of Correction shall issue a RFP for passive and active Global Positioning Systems for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services.

No less than 30 days prior to issuing these RFPs, the Department shall provide the Fiscal Research Division with copies of the draft RFPs. The RFPs shall be issued by August 1, 2006, for contract terms to begin January 1, 2007.

The Department of Correction shall report by October 1, 2006, to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the responses to the RFPs.

SECTION 17. No later than January 1, 2007, the Department of Correction shall develop a graduated risk assessment program that identifies, assesses, and closely monitors a high-risk sex offender who, while not classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, may still require extraordinary supervision and may be placed on probation, parole, or post-release supervision only on the conditions provided in G.S. 15A-1343(b2) or G.S. 15A-1368.4(b1).

SECTION 18. The Department of Correction shall study and develop a plan for offering mental health treatment for incarcerated sex offenders designed to reduce the likelihood of recidivism. The Department shall study appropriate and effective mental health treatment techniques and alternatives. Services must be best practices, as determined by the Department. The Department will consult various stakeholders from organizations dedicated to the prevention of sexual assault, victims' advocacy organizations, and experts in the field of treatment of sexual offenders. The Department shall consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than January 15, 2007, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and the General Assembly on or before October 1, 2007.

SECTION 19. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 20. Section 15 of this act is effective as provided therein. Sections 14, 16, 17, 18, and 19 are effective when this act becomes law. Section 20 of this act becomes effective July 1, 2006. Except as otherwise provided in this act, the remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1896

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

H1896-ARK-67 [v.3]

Date 7/5/06 ,2006

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

Rand

moves to amend the bill on page 1, lines 3 and 4, by rewriting those lines to read:

"REGISTRATION PROGRAMS; (2) TO IMPLEMENT A SATELLITE BASED MONITORING", and

On page 3, lines 36 through 39, by rewriting those lines to read:

"Registration shall be maintained for a period of at least 10 years following the date of initial county registration." , and

On page 12, line 12 by rewriting that line to read:

"remitted quarterly to the Department of Correction." , and

On page 13, line 33, by deleting the word "G.S. 15A-1368.4A" and substituting the word "G.S. 14-208.36", and

On page 14, line 38, by rewriting the line to read:

"appropriated by Senate Bill 1741 as enacted by the 2005 General Assembly, Regular Session 2006, to the Department of Correction,".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1896

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

H1896-ARK-67 [v.3]

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 1896:
Sex Offender Registration Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 4, 2006
Introduced by:		**Summary by:**	Hal Pell
Version:	PCS to Third Edition H1896-CSRK		Committee Co-Counsel

SUMMARY: ***This act amends the sex offender registration statutes, amends criminal laws, imposes electronic monitoring requirements, and appropriates funds for the purposes of the act.***

CURRENT LAW: There are two established sex offender registration programs: the Sex Offender and Public Protection Registration Program, with a registration period of 10 years, and the Sexually Violent Predator Registration Program, with a lifetime registration requirement. [See Page 4 for definition of terms]

BILL ANALYSIS:

Section 1 -- Adds statutory rape of a person who is 13, 14, or 15 years old by a person who is at least six years older to the list of offenses that require sex offender registration.

Section 2 -- Amends explanatory statute to conform to reflect new requirement for in-person registration. (See Section 5, below)

Section 3 -- Requires juveniles subject to registration to also register in person.

Section 4 -- Requires notice to the sheriff in the offender's county of registration when the offender will be working for a specified periods of time in another county.

Section 5 -- Requires in-person registration.

Section 6 -- Current law provides that a person moving out of state must notify the Sheriff no later than 10 days after moving to the new state. The act amends the law to require that the person notify the Sheriff in person of the intent to move at least 10 days before the departure date. The person is required to provide, in writing, the following: address, municipality, county and state of intended reference.

If the person does not leave the State as provided in the notification, then the person must so notify the Sheriff within 10 days after the previously indicated move date. The section also provides similar amendments to the notification procedures for change of academic and employment status.

If the Sheriff determines that the file photograph is not an accurate depiction of the registrant, then a new photograph must be taken.

Section 7 -- Adds additional requirements to the registration provisions:

- Verification biannually instead of annually
- Verification in person within 10 days of receipt of the form.
- If the Sheriff determines that the file photograph is not an accurate depiction of the registrant, then a new photograph must be taken.

Section 8 – Adds the following to offenses designated as Class F felonies:

- Fails to report in person as required by the act
- Reports intent to reside in another State but remains in the State without notification to the Sheriff.
- Fails to notify the Sheriff of out-of-county employment.

Section 9 -- Creates a new Class H felony offense for persons who have reason to believe that a person is in noncompliance with the sex offender registration statutes, and with the intent to assist the offender in eluding law enforcement agencies, does any of the following:

- Withholds information about the noncompliance, or the whereabouts of the offender
- Harbors, attempts to harbor, or assists another in these actions
- Conceals, attempts to conceal, or assists another in these actions
- Provides false information to a law enforcement agency, knowing it to be false

Section 10 – Under current law, a 10-year registration terminates automatically if the registrant has not committed any offense subject to registration. The section amends current law to require the registrant to file a petition in the superior court to terminate the registration period. The amendments provide guidelines for the judge in determining whether to grant the petition. The District Attorney is notified at least three weeks prior to a hearing, and may present evidence in opposition. An unsuccessful petitioner must wait one year following a denial to re-petition the court. If the relief is granted, then the person's name is removed from the registry.

Section 11 – Prohibits persons with a lifetime registration requirement from working (paid or volunteer) at any place where the person would instruct, supervise, or care for minors. A violation of the provision is a Class F felony.

Section 12 -- Expands the definition of 'sexual contact,' which is the term defining the physical act in the statutory offense of sexual battery.

Section 13 -- Requires juvenile court counselors to report on behalf of juvenile registrants biannually (currently an annual requirement).

Section 14 -- Requires probation officers to conduct a search of the probationer's name against the registration information complied under the sex offender registration act.

Section 15 –

- Requires the Department of Correction (DOC) to use an electronic monitoring system for those lifetime registrants required to submit to such monitoring that does the following:
    - Actively monitors the offender
    - Identifies the offender's location
    - Timely reports or records the offenders presence near of within a crime scene, prohibited area, or departure from specified geographical limitations.

If there is not a system available that complies with the section's requirements, then the Department is authorized to use a passive electronic system that works within the technological or geographical limitations.

- Creates two categories of individuals who are required to submit to electronic monitoring, and requires a court to impose registration as a condition of probation or parole.
    - Sexually violent predators, recidivists, or convicted of an aggravated offense. The term of electronic monitoring is life. The person may petition the Post-Release Supervision and Parole Commission to terminate the monitoring upon completion of the person's sentence, and any period of probation, parole, or post-release supervision. The person remains on unsupervised probation for the duration of the term.
    - Persons who committed an offense involving the physical, mental, or sexual abuse of a minor, and who require the highest level of supervision based on the DOC sex offender risk assessment program. The person is subject to monitoring for the time period ordered by the court.

A person required to enroll who doesn't do so is guilty of a Class F felony. Intentionally tampering with, removing, or vandalizing a device is a Class E felony.

There is a fee of $90 payable upon enrollment. Upon motion and good cause, the court may waive the fee. The fee is to offset the costs of the monitoring, and a payment schedule may be set by a probation officer.

Section 16 -- Requires the DOC to issue a Request for Proposal (RFP) for electronic monitoring and monitoring services. The RFP is for the most recent, and cost-effective technology available. The DOC is required to issue an RFP for passive and active Global Positioning Systems (GPS) for use as an intermediate sanction for sex offenders. The RFP must have separate bids: one for equipment, maintenance, and technical support; and one for the foregoing items plus monitoring services. The contract term would begin on January 1, 2007. The section contains report dates for the draft RFP (to Fiscal Research), and RFP responses (to Appropriation Committees and Subcommittee Chairs).

Section 17 -- Requires the DOC to develop, no later than January 1, 2007, a graduated risk assessment program that identifies persons that may not be lifetime registrants, but may need extraordinary supervision under similar conditions as a lifetime registrant.

Section 18 -- Requires the Department of Correction to study and develop a plan of mental health treatment programs for incarcerated sex offenders designed to reduce the likelihood of recidivism. The Department is required to report back to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services. A preliminary report is due no later than January 15, 2007, and a final report no later than October 1, 2007.

Section 19 -- Severability clause.

Section 20 – Section 15 is effective as provided. Sections 14, 16, 17, 18, and 19 are effective when the act becomes law. Section 20 is effective July 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

G.S. 14-208.6 Definitions.

. . .

(4) **"Reportable conviction"** means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.

(5) **"Sexually violent offense"** means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), 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), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(6) **"Sexually violent predator"** means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

Summary contribution by Susan Sitze, Staff Attorney

H1896e3-SMRK-CSRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1896

Short Title:	Affordable Housing for Teachers/Bertie Co.	(Local)
Sponsors:	Senator Holloman.	
Referred to:	State and Local Government.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE BERTIE COUNTY BOARD OF EDUCATION TO CONSTRUCT AND PROVIDE AFFORDABLE RENTAL HOUSING FOR TEACHERS AND OTHER LOCAL GOVERNMENT EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 66-58, G.S. 115C-518, or any other provision of law, and subject to the restrictions set out in this act, the Bertie County Board of Education may contract with any person, partnership, corporation, or other business entity to construct, provide, or maintain affordable rental housing on property owned or leased by the Bertie County Board of Education.

SECTION 2. Notwithstanding G.S. 66-58, G.S. 115C-518, or any other provision of law, the Bertie County Board of Education may rent housing units owned by the Board pursuant to this act for residential use. In renting these housing units, the Board shall give priority to Bertie County public school teachers and shall restrict the rental of such units exclusively to such teachers or other Bertie County School System employees. The Board shall have the authority to establish reasonable rents for any such housing units and may in its discretion charge below-market rates.

SECTION 3. This act shall not exempt any affordable housing units constructed pursuant to this act from compliance with applicable building codes, zoning ordinances, or health and safety statutes, rules, or regulations.

SECTION 4. This act authorizes the Board to construct and maintain an affordable housing project located at 249 White Oak Road, Windsor, North Carolina

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-234
HOUSE BILL 88

AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO EXTEND FILING FEE PROVISIONS TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ~~ten~~ two percent ~~(10%)~~ (2%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party."

SECTION 2. G.S. 163-97 reads as rewritten:

"**§ 163-97. Termination of status as political party.**

When any political party fails to ~~poll for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors at a general election,~~ meet the test set forth in G.S. 163-96(a)(1), it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter."

SECTION 3. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ~~ballots.~~ballots upon paying a filing fee equal to that provided for candidates for the

office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates ~~for State, congressional, and national offices~~ in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

SECTION 4. G.S. 163-122(a)(1) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of ~~registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held.~~voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

...."

SECTION 5. G.S. 163-122 is amended by adding a new subsection to read:

"(d) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1."

SECTION 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the

date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 7. This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:04 p.m. this 13th day of August, 2006

Restore House Bill 88

More Voices = Better Democracy

REDUCE THE SIGNATURE REQUIREMENT

RESTORE HB 88 TO VERSION THREE - THE VERSION THAT PASSED TWO NC HOUSE COMMITTEES BY UNANIMOUS VOTE!

RESTORE THE SIGNATURE REQUIREMENT FROM 2% (CURRENT) TO .5% TODAY!

What are other states' signature requirements?

- Twenty-one states require 10,000 signatures or fewer for third parties
- Nine states require 5,000 signatures or fewer for parties and independents
- South Carolina requires 10,000 signatures for third parties and independent candidates

State	Signatures
Minnesota	141,420
California	77,389
North Carolina	69,734
Louisiana	1,000
Colorado	1,000
Hawaii	648
Mississippi	*0*
Florida	*0*

For more information visit www.NCOpenElections.org

The NC Open Elections Coalition to reform NC's ballot access laws is endorsed by:

NC League of Women Voters
Democracy NC
NC PIRG
Common Cause
NC ACLU
Southerners for Economic Justice
Muslim American Public Affairs Council
A.C.O.R.N.
NC Green Party
NC Libertarian Party
NC Constitution Party

...and hundreds of citizens across North Carolina

- At 69,734 required signatures, North Carolina has the third most restrictive ballot access laws in the nation.

- The NC Open Elections Coalition has collected over 700 signatures in support of the restored version of HB88 from citizens in Transylvania, Yadkin, Wake, Mecklenburg, Dare, Buncombe, Pitt counties, & more.

- No third party has been able to collect the required signatures through grassroots efforts, spending over $100,000 to hire professional petitioners to meet the requirements.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-5-06

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Dion. Terry	JWP Civitas Institute
Kim Strach	SBOE
Michael Crowell	Lawyer, Raleigh
Mark Trawick	Donald Beaver Intern
Josh Stein	NCDOJ
Greg McLeod	"
Rob Thompson	NCPDRC
Julie Omohundro	Durham NC
Matt Osborne	AOC
Caley Wyngaard	Gov's office
Kristin Kelley	gov. office

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-5-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Ben Tuite	Rep. Hackney's Office
[signature]	JD, AL, PA
[signature]	NC CCR
[signature]	NCATL
Jill Shotzberger	ACLU-NC
Rebekah Gonsarous	ACLU-NC
Joal Broun	NCSOS
Haley Montgomery	NCSOS
Bruce Garner	NCSOS
Barbara Conde	BBCR
Stacy Flannery	NCACFA
[signature]	INCEL

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-5-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Johanna Reese	DOT
Doug Heron	NC BAR ASSOCIATION
David Anders	PFFPNC
Michael Houser	NCAE
Carlos Payne	Edmisten & Webb
Eric Sauls	Edmisten & Webb
Anthony Brown	NCAE
Aimee Schmidt	NC Green Party
Hart Matthews	NC GreenParty, NC Open Elections Coalition
Elena Everett	NC Green Party
Ben Carroll	NC Green Party

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-5-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Ed King	NC Green Party
Karen Johnson	Smith Anderson
Jon Carr	Jordan Price
Rob Schofield	NCCNP
Lydia Vann	NC ACC
Rebecca Sweeney	NCAR
Stephanie Simpson	NCAR
Leslie Bovacqui Compos	Capstrat
[illegible]	NCFPC
Kevin Leonard	WCSR
Chip Killian	Nelson Mullins
Conrad [illegible]	

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-5-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Boffkin	Alley Assoc, Inc.
Rick Zechini	NCAR
Alex Sewell	NCSR
R. Paul Wilms	NCMBA
Jim Mann	NCDOC-DCC
Robert Lee Guy	DOC - DCC
Frank W. Folger	Helms Mullis Wicker
Bill Scoggin	KCCH
Lee Hodge	"
Betty Turner	BAC
Catherine Davis	CC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-5-06

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
John Mattg	[illegible]
Paul [illegible]	Infinium Inc.
John Bowlish	AstraZeneca
[illegible] Foster	NCVCE
David Crawford	A [illegible]
Bob Hall	Democracy NC
Jim Blackburn	NC Association of County Commissioners

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 6, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 88	Electoral Fairness Act.	Representative Miller
HB 1146	Foreclosure Reform.	Representative Michaux, Jr.
HB 1248	Identity Theft Protection Act of 2005.	Representative Goforth Representative Kiser Representative Ray Representative Sutton
HB 1846	Contribution Changes.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 1847	Treasurer Training.	Representative Ross Representative Hackney Representative Howard
SB 1523	2006 Technical Corrections Act.	Senator Hartsell

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

July 6, 2006

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:04 a.m. with seventeen members present. He introduced Pages Molly Crenshaw, Kaitlin Frey, and Chancy Rouse, all from Raleigh, NC. Eron Kublers, from Apex, NC, Nathan Sink, From Lexington, NC, and Meredith Potter, from Pinehurst, NC.

Senator Clodfelter stated that HB-88 and HB-1146 would not be heard at this time.

SB-1523 (2006 Technical Corrections Act.) Committee Substitute was introduced by Senator Clodfelter. No discussion. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-1248 (Amend Identity Theft Protection Act of 2005) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Walker Reagan explained changes to the bill. Ms. Haley Montgomery from the NC Secretary of State's office and Mr. Josh Stein from the Consumer Protection Division of the NC Attorney General's office spoke on the bill. Senator's Jeanne Lucas, Harry Brown, Jerry Tillman, Phillip Berger, and Tony Rand had questions. Ms. Montgomery and Mr. Stein answered the questions. Senator Rand moved for a Favorable Report with an Amendment to be made on the Senate floor. All members voted yes. Motion carried

HB-1846 (Contribution Changes) Committee Substitute was re-introduced by Senator Clodfelter. The Committee Substitute was adopted at the 7-5-06 J-1 Committee meeting. He stated that Amendments are still in progress, so the bill will be displaced at this time.

HB-1847 (Treasurer Training) Committee Substitute was introduced by Senator Clodfelter. Senator Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Bill Gilkeson explained changes to the bill. Senator's Martin Nesbitt, Jerry Tillman, Janet Cowell, Phillip

Berger, Andrew Brock, Richard Stevens, Vernon Malone and R.C. Soles had questions. Representative Deborah Ross, Mr. Gilkeson, and Ms. Kim Stripe from NC Board of Elections answered the questions. Senator Tony Rand moved for a Favorable Report. Majority of members voted yes. Motion carried.

Being no further business the meeting adjourned at 11:01 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Thursday, July 06, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

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

S.B. **1523** 2006 Technical Corrections Act.

Draft Number:	PCS 15427
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) **1248** Identity Theft Protection Act of 2005.

Draft Number:	PCS 70794
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) **1847** Treasurer Training.

Draft Number:	PCS 50764
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

Jarrel

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1523*
PROPOSED COMMITTEE SUBSTITUTE S1523-PCS15427-RU-100

Short Title: 2006 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-10(b) reads as rewritten:

"(b) All summons served personally or by mail under this section or under G.S. 9-11 shall inform the prospective juror that persons ~~65~~72 years of age or older are entitled to establish in writing exemption from jury service for good cause, shall contain a statement for claiming such exemption and stating the cause and a place for the prospective juror's signature, and shall state the mailing address of the clerk of superior court and the date by which such request for exemption must be received."

SECTION 2.(a) G.S. 10B-20(1) reads as rewritten:

"(l) A notary public required to comply with the provisions of ~~subsection (g)~~subsection (i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 2.(b) G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The state and county of commissioning of the registrant.

(3) The expiration date of the registrant's notary commission.

(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in ~~subsection (7),~~ subdivision (7) of this subsection, which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule."

SECTION 3. G.S. 15A-615(a) reads as rewritten:

"(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral ~~intercourse,~~ intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or ~~less,~~less; or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years ~~old,~~old; the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections:

(1) Chlamydia;
(2) Gonorrhea;
(3) Hepatitis B;
(3a) Herpes;
(4) HIV; and
(5) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed."

SECTION 4. G.S. 41-47(c) reads as rewritten:

"(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written ~~notice~~ notice, addressed to the registering entity,

from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article."

SECTION 5. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

(1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

(5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

..."

SECTION 6. G.S. 45-38 reads as rewritten:

"**§ 45-38. Recording of foreclosure.**

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure that includes the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of the original parties to the original instrument foreclosed, and the recording data for the instrument foreclosed. A notice of ~~forfeiture~~foreclosure shall be indexed by the register of deeds in accordance with ~~G.S. 161-14.1.~~G.S. 161-14.1."

SECTION 7.(a) G.S. 47C-3-116(e) reads as rewritten:

"(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 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.~~G.S. 47C-4-117."

SECTION 7.(b) G.S. 47C-3-121(2)b. reads as rewritten:

"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"**."

SECTION 8.(a) G.S. 47F-1-102(c) reads as rewritten:

"(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), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and ~~G.S. 47C-3-121~~ G.S. 47F-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, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 8.(b) G.S. 47F-3-121(2)b. reads as rewritten:

"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"**."

SECTION 9.(a) G.S. 55-11-04(b) reads as rewritten:

"(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the ~~parent~~ surviving corporation shall, within 10 days after the effective

date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective."

SECTION 9.(b) G.S. 55-11-05(d) reads as rewritten:

"(d) In the case of a merger ~~or share exchange~~ pursuant to G.S. 55-11-07 or ~~G.S. 55-11-09.~~a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and ~~(b)~~(a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 9.(c) G.S. 55A-11-06(c) reads as rewritten:

"(c) This section does not limit the power of a foreign corporation to acquire all or part of the ~~shares~~ memberships of one or more classes ~~or series~~ of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 9.(d) G.S. 57C-9A-02(a2) reads as rewritten:

"(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and ~~(2)~~(1a) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document."

SECTION 10. G.S. 58-47-140 reads as rewritten:

"**§ 58-47-140. Other provisions of this Chapter.**

The following provisions of this Chapter apply to workers' compensation self-insurance groups that are subject to this Article:

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19, 30, 33, 34, and 63 of this ~~Chapter apply to groups.~~Chapter."

SECTION 11. G.S. 90-270.67 reads as rewritten:

"**§ 90-270.67. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

(1a) Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) ~~"Occupational therapy" means a~~Occupational therapy. – A health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article."

SECTION 12. G.S. 90B-9 reads as rewritten:

"**§ 90B-9. Renewal of certificates and licenses.**

(a) All certificates and licenses shall be effective upon date of issuance by the Board, and shall be renewed on or before the second June 30 thereafter.

(b) All certificates and licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each certificate or license, the Board shall mail a notice and application for renewal to the certificate holder or licensee. Prior to the expiration date, the application shall be returned properly completed, together with a renewal fee established by the Board pursuant to ~~G.S. 90B-6.2(a)(5)~~G.S. 90B-6.2(a)(4) and evidence of completion of the continuing education requirements established by the Board pursuant to G.S. 90B-6(g), upon receipt of which the Board shall renew the certificate or license. If a certificate or license is not renewed on or before the expiration date, an additional fee shall be charged for late renewal as provided in ~~G.S. 90B-6.2(a)(6).~~G.S. 90B-6.2(a)(5).

(c) A certificate or license issued under this Chapter shall be automatically suspended for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate a certificate or license suspended under this subsection upon payment of a reinstatement fee as provided in ~~G.S. 90B-6.2(a)(7)~~G.S. 90B-6.2(a)(6) and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. The Board shall have exclusive jurisdiction to investigate alleged violations of this Chapter by any person whose certificate or license has been suspended under this subsection and, upon proof of any violation of this Chapter, the Board may take disciplinary action as provided in G.S. 90B-11.

(d) Any person certified or licensed and desiring to retire temporarily from the practice of social work shall send written notice thereof to the Board. Upon receipt of such notice, his or her name shall be placed upon the nonpracticing list and he or she

shall not be subject to payment of renewal fees while temporarily retired. In order to reinstate certification or licensure, the person shall apply to the Board by making a request for reinstatement and paying the appropriate fee as provided in G.S. 90B-6.2."

SECTION 13. G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

~~Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.~~

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

SECTION 14. G.S. 113-270.3(d) reads as rewritten:

"(d) Any individual who possesses any of the lifetime sportsman licenses established by G.S. 113-270.1D(b) may engage in specially regulated activities without the licenses required by subdivisions (1), (2), (3), and (5) of subsection (b) of this section. Any individual possessing an annual sportsman license established by G.S. 113-270.1D(a) or a lifetime or annual comprehensive hunting license established by G.S.113-270.2(c)(2) or (5) may engage in specially regulated activities without the licenses required by subdivisions ~~(1) and (3)~~(1), (3), and (5) of subsection (b) of this section."

SECTION 15. G.S. 115C-499.3(a) reads as rewritten:

"(a) Subject to the amount of net income available under G.S. 18C- 164(b)(2), a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs."

SECTION 16.(a) G.S. 120-4.21(c), as it applies to members retiring before September 1, 2005, reads as rewritten:

"(c) Limitations applicable to members retiring before September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary"."

SECTION 16.(b) G.S. 120-4.21(c), as it applies to members retiring on or after September 1, 2005, is recodified as G.S. 120-4.21(d) and reads as rewritten:

"(d) Limitations applicable to members retiring on or after September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of the member's "highest annual salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system."

SECTION 17.(a) G.S. 130A-309.10 (f)(7) reads as rewritten:

"(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~of the disposal of~~on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings."

SECTION 17.(b) This section is effective October 1, 2009.

SECTION 18.(a) G.S. 135-3(8)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part time, temporary, interim, or on a fee for service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the

balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

~~in full-time capacity that exceeds fifty percent (50%) of the applicable workweek.~~"

SECTION 18.(b) This section is effective June 30, 2007.

SECTION 19. The catch line of G.S. 158-33 reads as rewritten:

"**§ 158-33. Creation of ~~Global TransPark Development Zone.~~North Carolina's Eastern Region.**"

SECTION 20.(a) The introductory language of Section 5 of S.L. 2005-123 reads as rewritten:

"**SECTION 5.** G.S. 47-46.1 and G.S. 47-46.2 read~~reads~~ as rewritten:".

SECTION 20.(b) This section is effective October 1, 2005.

SECTION 21. S.L. 2005-123 is amended by adding a new section to read:

"**SECTION 9.1.** The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 22. Section 3 of S.L. 2005-127 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. For each water and sewer authority organized under Article 1 of Chapter ~~162~~162A of the General Statutes, Section 2 of this act applies on the first day of the fiscal year of the authority that begins on or after the date this act becomes effective."

SECTION 23. Section 1 of S.L. 2005-133 reads as rewritten:

"**SECTION 1.** Under the Occupational Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term "Commission" for the term "Board" wherever that term appears in the General Statutes in relation to the Act. The Revisor of Statutes is also authorized to insert the words "North Carolina Occupational" in front of the phrase "Safety and Health Review Commission" wherever that phrase appears in the General Statutes in relation to the Act."

SECTION 24.(a) Section 7(a) of S.L. 2005-192 is codified as G.S. 36C-11-1106 and reads as rewritten:

"**§ 36C-11-1106. Application to existing relationships.**

(a) ~~Section 2 of this act becomes effective January 1, 2006, and except~~Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, this Chapter applies to (i) all trusts created before, on, or after ~~that date;~~January 1, 2006; (ii) all judicial proceedings concerning trusts commenced on or after ~~that date;~~January 1, 2006; and (iii) judicial proceedings concerning trusts commenced before ~~that date~~January 1, 2006, unless the court finds that application of a

particular provision of ~~Chapter 36C of the General Statutes~~this Chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of ~~Chapter 36C of the General Statutes~~this Chapter does not apply and the superseded law applies.

(b) Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, any rule of construction or presumption provided in ~~Chapter 36C of the General Statutes~~ this Chapter applies to trust instruments executed before ~~the effective date of Section 2 of this act~~ January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~ this Chapter, an act done before ~~the effective date of Section 2 of this act~~January 1, 2006, is not affected by ~~Chapter 36C of the General Statutes.~~this Chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before ~~the effective date of Section 2 of this act,~~January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded."

SECTION 24.(b) Section 7(b) of S.L. 2005-192 reads as rewritten:

"**SECTION 7.(b)** ~~Section 1 and Sections 3 through 5~~Sections 1 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law."

SECTION 24.(c) The Revisor of Statutes is authorized to cause to be printed along with G.S. 36C-11-1106, as enacted by this section, all relevant portions of the Official Commentary to this section of the Uniform Trust Code and all explanatory comments of the drafters as the Revisor deems appropriate.

SECTION 25. Section 7 of S.L. 2005-351 reads as rewritten:

"**SECTION 7.** This act becomes effective October 1, 2005, and applies to powers of attorney created ~~before and~~ on, before, or after that date."

SECTION 26. S.L. 2006-11 is amended by adding a new section to read:

"**SECTION 2.1.** The Revisor of Statutes shall cause to be printed along with G.S. 25-9-705, as amended by this act, all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 27. This act is effective when it becomes law.

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: July 5, 2006

RE: Senate Bill 1523 (2006 Technical Corrections Act)

General Comments

Sections 1 through 26 the proposed committee substitute for this bill contains corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments correct redlining, grammatical, stylistic, punctuation, and other obvious drafting errors, conform terminology and language and make other conforming amendments, update or correct names and statutory references, alter punctuation to make a provision more clear, make two obvious clarifying amendments, codify two applicability provisions that are long-term or permanent rather than transitional, and authorize the printing of official and drafters comments.

Specific Comments

Section 1. S.L. 2005-149 amended G.S. 9-6.1 to raise the age at which a person summoned for jury duty could request an exemption on the grounds of age from 65 to 72. This section makes a conforming change to G.S. 9-10(b), which requires the summons to inform recipients of this exemption.

Section 2. This section makes two technical corrections in the new notary chapter, Chapter 10B of the General Statutes. Subsection (a) amends G.S. 10B-20(l) to correct a cross-reference ("subsection (g)" should be "subsection (i)"). Subsection (b) amends G.S. 10B-106(d) to correct the terminology ("subsection" here should be "subdivision") and the style of the cross-reference.

Section 3. This section amends the introductory language of G.S. 15A-615(a) by changing the commas between the offenses listed in this part of the subsection to semicolons to make the paragraph easier to read.

Section 4. This section amends G.S. 41-47(c) to specify that when a claimant to a security registered in TOD form wishes to contest the transfer to the TOD beneficiary after the security owner's death, the written notice the claimant must give the registering entity must actually be addressed to that entity.

Section 5. G.S. 45-37(a)(1), (5), and (6) were enacted as part of S.L. 2005-123, which substantially revised the law dealing with mortgage satisfactions. These three subdivisions were intended to preserve the effectiveness of security instruments that were satisfied of record in accordance with the former law. This section amends these three subdivisions to make it clear that they apply only to security instruments that were satisfied of record before the effective date of the revision by S.L. 2005-123 (October 1, 2005).

Section 6. This section amends G.S. 45-38 to correct an obvious error in terminology. The reference to a "notice of forfeiture" should be to a "notice of foreclosure". The section also corrects the style of a citation ("G.S. 161-14.1", not "G.S. 161.14.1").

Section 7. Subsection (a) of this section amends G.S. 47C-3-116(e) to correct a citation (from a section in the chapter on planned communities to the equivalent section in Chapter 47C, on condominiums). Subsection (b) deletes an extra word in G.S. 47C-3-121(2)b. (see essentially the same amendment in the next section).

Section 8. Subsection (a) of this section amends G.S. 47F-1-102(c) to correct a citation (from a section in the chapter on condominiums to the equivalent section in Chapter 47F, on planned communities). Subsection (b) deletes an extra word in G.S. 47F-3-121(2)b. (see essentially the same amendment in the preceding section).

Section 9. This section amends four different business entity statutes. Subsection (a) amends G.S. 55-11-04(b) to correct the terminology. The current wording assumes that the parent corporation in a merger between a parent and its subsidiary under this provision will be the surviving corporation, and this is not necessarily the case. Subsection (b) amends G.S. 55-11-05(d) to make the language parallel to similar language in G.S. 55-11-06(c). Subsection (c) amends G.S. 55A-11-06(c) to correct the terminology; nonprofit corporations organized under Chapter 55A of the General Statutes may have members but they do not have shareholders or issue shares. Subsection (d) corrects a cross-reference in G.S. 57C-9A-02(a2).

Section 10. This section amends G.S. 58-47-140 to delete extra language that was inadvertently not deleted when the section was reformatted last year by Section 15 of S.L. 2005-215, when the current introductory language was added.

Section 11. This section amends G.S. 90-270.67 to conform the style of the definition of "occupational therapy" to the style of every other definition in G.S. 90-270.67.

Section 12. This section corrects three cross-references in G.S. 90B-9.

Section 13. This section makes a conforming amendment to G.S. 113-133.1(e) by deleting the entry for Harnett County. The local act reflected in that entry, Chapter 636 of the 1977 Session Laws, was repealed last year by S.L. 2005-28.

Section 14. This section makes a conforming amendment to G.S. 113-270.3(d) to add a reference to G.S. 113-270.3(b)(5), bringing G.S. 113-270.3(d) into conformity with G.S. 113-270.2. Waterfowl privileges were added to the comprehensive hunting licenses by S.L. 1999-399.

Section 15. This section amends G.S. 115C-499.3(a) to insert the missing word "under".

Section 16. G.S. 120-4.21(c) was amended last year in S.L. 2005-276 (Section 29.30A(j)), but these amendments were restricted to members retiring on or after September 1, 2005. This section codifies both versions of the subsection and also codifies the applicability language for each.

Section 17. This section amends G.S. 130A-309.10(f)(7) to delete "garbage language" from the version of that subdivision that will become effective October 1, 2009. The subdivision was amended in 2005 by two different acts, S.L. 2005-348, s. 3, and S.L. 2005-326, ss. 2 and 3, effective on different dates. The amendments with the latest effective date did not take into account amendments in the other act, with the result that when the amendments with the latest effective date take effect on October 1, 2009, there will be extra, unneeded, words in the subdivision that should be deleted.

Section 18. G.S. 135-3(8)c. was amended multiple times in 2005, with the result that the version effective June 30, 2007, contains "garbage language" that should be deleted. This section deletes this "garbage language" effective June 30, 2007.

Section 19. This section makes a conforming amendment to the catchline of G.S. 158-33 to update the name of the Global TransPark Development Zone to North Carolina's Eastern Region. This name change was made by the General Assembly last year in S.L. 2005-364, but the name was not changed in this one place.

Section 20. Subsection (a) of this section amends the introductory language of Section 5 of S.L. 2005-123 to include a reference to G.S. 47-46.2, which is also amended in Section 5. Subsection (b) makes this section effective on the effective date of S.L. 2005-123.

Section 21. This section amends S.L. 2005-123 to add a new section that authorizes the Revisor of Statutes to print the Official Comments to the Uniform Residential Mortgage Satisfaction Act and comments of the drafters of S.L. 2005-123 in the appropriate locations in the General Statutes.

Section 22. This section amends the effective date and applicability section of S.L. 2005-127 by correcting a citation ("162" should have been "162A").

Section 23. This section amends Section 1 of S.L. 2005-133 to complete the general authorization for the Revisor of Statutes to update the name of the Safety and Health Review Board to the North Carolina Occupational Safety and Health Review Commission.

Section 24. S.L. 2005-192 enacted a North Carolina version of the Uniform Trust Code, with conforming amendments. Section 7(a) of S.L. 2005-192 contains effective date and applicability provisions for Section 2 of S.L. 2005-192 (which contains the Uniform Trust Code, codified as Chapter 36C of the General Statutes); Section 7(b) contains effective date provisions for the remainder of S.L. 2005-192. Although some provisions in Section 7(a) are truly transitional, having only a limited lifespan, others, such as the applicability of the new act to existing trusts and trust documents, have permanent application and should be codified.

Subsections (a) and (b) of this section amend Section 7(a) of S.L. 2005-192 to move the effective date of Section 2 of S.L. 2005-192 from Section 7(a) to Section 7(b), leaving only applicability provisions in Section 7(a). Subsection (a) of this section codifies Section 7(a) of S.L. 2005-192 as G.S. 36C-11-1106. Subsection (c) of this section authorizes the Revisor of Statutes to print the Official Comment to the applicability section of the Uniform Trust Code and the drafters comment to Section 7(a).

Section 25. This section amends the applicability language in Section 7 of S.L. 2005-351 to fill a time gap.

Section 26. This section amends S.L. 2006-11 to add authorization for the Revisor of Statutes to print drafters comments for the amendment to G.S. 25-9-705 made by S.L. 2006-11.

Section 27. This section is the effective date section for the entire bill ("when it becomes law").

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

SENATE BILL 1523*

Short Title:	2006 Technical Corrections Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 10B-20(1) reads as rewritten:

"(l) A notary public required to comply with the provisions of ~~subsection (g)~~subsection (i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 1.(b) G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
(2) The state and county of commissioning of the registrant.
(3) The expiration date of the registrant's notary commission.
(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device

of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.

(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in ~~subsection (7),~~ subdivision (7), which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule.

SECTION 2.(a) Section 7(a) of S.L. 2005-192 is codified as G.S. 36C-11-1106 and reads as rewritten:

"**§ 36C-11-1106. Application to existing relationships.**

(a) ~~Section 2 of this act becomes effective January 1, 2006, and except~~Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, this Chapter applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts commenced on or after ~~that date;~~January 1, 2006; and (iii) judicial proceedings concerning trusts commenced before ~~that date~~January 1, 2006, unless the court finds that application of a particular provision of ~~Chapter 36C of the General Statutes~~this Chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of ~~Chapter 36C of the General Statutes~~this Chapter does not apply and the superseded law applies.

(b) Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, any rule of construction or presumption provided in ~~Chapter 36C of the General Statutes~~ this Chapter applies to trust instruments executed before ~~the effective date of Section 2 of this act~~ January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~ this Chapter, an act done before ~~the effective date of Section 2 of this act~~January 1, 2006, is not affected by ~~Chapter 36C of the General Statutes.~~this Chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before ~~the effective date of Section 2 of this act,~~January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded."

SECTION 2.(b) Section 7(b) of S.L. 2005-192 reads as rewritten:

"**SECTION 7.(b)** ~~Section 1 and Sections 3 through 5~~Sections 1 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law."

SECTION 2.(c) The Revisor of Statutes is authorized to cause to be printed along with G.S. 36C-11-1106, as enacted by this section, all relevant portions of the Official Commentary to this section of the Uniform Trust Code and all explanatory comments of the drafters as the Revisor deems appropriate.

SECTION 3. G.S. 41-47(c) reads as rewritten:

"(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written ~~notice~~ notice, addressed to the registering entity, from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article."

SECTION 4.(a) G.S. 55-11-04(b) reads as rewritten:

"(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the ~~parent~~ surviving corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective."

SECTION 4.(b) G.S. 55-11-05(d) reads as rewritten:

"(d) In the case of a merger or share exchange pursuant to G.S. 55-11-07 or G.S. 55-11-09, or a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and ~~(b)~~(a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 4.(c) G.S. 55A-11-06(c) reads as rewritten:

"(c) This section does not limit the power of a foreign corporation to acquire all or part of the ~~shares~~ memberships of one or more classes ~~or series~~ of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 4.(d) G.S. 57C-9A-02(a2) reads as rewritten:

"(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and ~~(2)~~(1a) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document."

SECTION 5. G.S. 113-133.1(e) reads as rewritten:

"(e) **(See editor's note)** Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed.

The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

~~Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.~~

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1846

Committee Substitute Favorable 6/6/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1846-CSRR-71 [v.5]

6/21/2006 9:04:10 PM

Short Title: 2006 Campaign Finance Changes. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO PROHIBIT THE USE OF BLANK PAYEE CHECKS IN CAMPAIGN CONTRIBUTIONS; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE; AND TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.14(b) reads as rewritten:

"(b) No entity shall ~~give,~~ make, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of ~~one hundred~~ fifty dollars ~~($100.00)~~ ($50.00) unless such contribution ~~be~~ is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No contribution in the form of check, draft, money order, credit card charge, debits or other noncash method may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record."

SECTION 2. G.S. 163-278.20 is repealed.

SECTION 3. G.S. 163-278.19(b) reads as rewritten:

"(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, ~~except as provided in G.S. 163-278.20,~~ and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever."

SECTION 4. G.S. 163-278.8 reads as rewritten:

"**§ 163-278.8. Detailed accounts to be kept by political treasurers.**

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee. The account of each contribution shall include the the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date that contribution was received. The account of each contribution shall be kept regardless of the size or form of the contribution, and regardless of whether the contribution was received at a fund-raising event.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) Repealed by Session Laws 2004-125, s. 5(a), effective July 20, 2004, and applicable to contributions made on or after January 1, 2003.

~~(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars ($100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars ($100.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of one hundred dollars ($100.00) or less,~~

~~each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars ($100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars ($100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars ($100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt.~~

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers."

SECTION 5. G.S. 163-278.11 reads as rewritten:

"**§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.**

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) Contributions. – Except as provided in subsection (a1) of this section, ~~A~~ a list of all contributions ~~required to be listed under G.S. 163-278.8~~ received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution

was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, "principal occupation of the contributor" means the contributor's:

a. Job title or profession; and

b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(3) Loans. – Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(a1) Threshold for Reporting Identity of Contributor. – A treasurer shall not be required to report the name, address, or principal occupation of any individual resident of the State who contributes fifty dollars ($50.00) or less to the treasurer's committee during an election cycle. The State Board of Elections shall provide on its reporting forms for the reporting of contributions below that threshold. On those reporting forms, the State Board may require date and amount of contributions below the threshold, but may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) Best Efforts. – When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this ~~Article.~~Article and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include ~~the~~ a provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain"."

SECTION 6. G.S. 163-278.15 reads as rewritten:

"**§ 163-278.15. No acceptance of contributions made by corporations, foreign and ~~domestic.~~domestic, or other prohibited sources.**

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North ~~Carolina.~~ Carolina, or made by any business entity, labor union, professional association, or insurance company. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

SECTION 7. G.S. 163-278.7 reads as rewritten:

"**§ 163-278.7. Appointment of political treasurers.**

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. – When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the ~~treasurer,~~ candidate, political committee, or referendum committee ~~who~~ and shall be fully responsible for any act or acts committed by ~~an~~ the assistant ~~treasurer,~~treasurer. ~~and the~~The treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political ~~committee, prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~office within three months of appointment, and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing~~ the training as to the duties of the ~~office,~~office in person, through ~~and shall conduct~~ regional ~~seminars for in-person training.~~ seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the ~~treasurer.~~treasurer and assistant treasurer."

SECTION 8. G.S. 163-278.9 is amended by adding a new subsection to read:

"(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f)."

SECTION 9. Sections 1 through 6 of this act become effective January 1, 2007 and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163-278.20 is not effective retroactively and shall not be deemed to render unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.

HOUSE BILL 1846:
2006 Campaign Finance Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 21, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	William R. Gilkeson
Version:	Second Edition -- H1846-CSRR-71		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for House Bill 1846 drops the thresholds for both accepting contributions in cash and for reporting the identity of a contributor from $100 to $50. It clarifies that the $50 identity reporting threshold is measured per election cycle. It prohibits the use of contribution checks and other instruments in which the payee blank is not filled in with the intended recipient of the contributor's choice. It adds a penalty for accepting contributions from certain sources that are prohibited from making contributions. It bars prosecution if a campaign treasurer uses the "best efforts" prescribed by the State Board of Elections to obtain the required information. And it requires treasurers to take training within 3 months of taking the office and every 4 years thereafter. This PCS modifies and merges three bills recommended by the House Select Committee on Ethics and Governmental Reform and passed by the House.

Sec. 1. Cash Contribution Threshold at $50. Currently, the law says no political contribution may be made or accepted in cash in excess of $100. ***This section drops that threshold to $50. Effective 1-1-07.***

Secs. 1, 2, & 3. No Blank Contribution Checks. Currently, the law is silent on whether a contributor can make a contribution leaving the instrument blank for someone else to fill in. ***Section 1 says no contribution using a check or other non-cash instrument may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. Sections 2 and 3 remove an old statute, GS 163-278.20, (and a reference to that statute) that has been cited on the issue of blank payee contributions. Effective 1-1-07.***

Secs. 4 & 5. Threshold for Reporting Contributor's Identity at $50. Currently, the law says treasurers must keep detailed accounts of every contribution. But if the contributor is an individual NC resident, the treasurer is required to report name, address, and principal occupation only if the contributor gives more than $100. ***Section 5 lowers the reporting of the contributor's identity from $100 to $50. It also specifies that the threshold is measured by all cumulative contributions from the same contributor during the same election cycle. "Election cycle" is a defined term that basically means the term of the office. Sections 4 and 5 together rearrange some statutory language to make clear that a treasurer must keep a record of certain information about each contribution, regardless of the size or form of the contribution or where it was received. The rewriting of those sections also provides that the State Board of Elections may have flexibility in providing on its forms for the reporting of sub-threshold contributions, as long as reporting the identity of the contributor is not required. Effective 1-1-07.***

Secs. 5 & 6. No Acceptance of Contributions That Can't Be Made; Best Efforts. Currently, the law prohibits corporations, other business entities, labor unions, professional associations, and insurance companies from making contributions. But accepting a contribution from the entities on that list is

prohibited only if the source is a corporation. ***Section 6 prohibits accepting contributions from the other prohibited sources on the list. In a related provision, the last part of Section 5 provides that prosecution is barred if a treasurer employs "best efforts," according to rules to be adopted by the State Board of Elections, to obtain the information required by the Article. However, if despite best efforts an illegal contribution is accepted, the Board can require it to be forfeited. Effective 1-1-07.***

Secs. 7 & 8. Treasurer Training. As a result of legislation enacted in 2005, the State Board of Elections is required to provide training for treasurers of political committees prior to the election in which the committee is involved. The training must be free. It must be available by electronic means and through regional in-person seminars. But treasurers are not required to take it. ***Section 7 requires every treasurer of a political committee to take State Board training within three months of appointment and every four years thereafter. The State Board must provide the training in person, in regional seminars, and through interactive electronic means. Section 7 provides for the appointment of an assistant treasurer to act for the committee, and if so the treasurer may designate the assistant to take the training. Section 8 says all reports must be filed by a treasurer or assistant treasurer who has taken the training. Effective 10-1-06.***

H1846e2-SMRR

Final

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1847
Committee Substitute Favorable 5/24/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1847-PCS50764-RR-75

Short Title: Electioneering Communications. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-278.80(1) reads as rewritten:

"(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is aired after an entity has ~~made disbursements~~incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has ~~made disbursements~~ incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year."

SECTION 1.(b) G.S. 163-278.90 reads as rewritten:

"**§ 163-278.90. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is transmitted after an entity has ~~made disbursements~~ incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has ~~made disbursements~~ incurred expenses for the direct costs of

producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is made within one of the following time periods:

1. 60 days before a general or special an election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

(3) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

(4) The term "mass mailing" means any mailing by United States mail or ~~facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list.~~facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(5a) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant ~~electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which:~~electorate" means:

~~a. If transmitted by mail or facsimile in connection with a clearly identified candidate for statewide office, is transmitted to 50,000 or more addresses in the State, by the transmission of identical or substantially similar matter within any 30-day period, or, in connection with a clearly identified candidate for the General Assembly, is transmitted to 5,000 or more addresses in the district, by the transmission of identical or substantially identical matter within any 30-day period.~~

~~b. If transmitted by telephone, in connection with a clearly identified candidate for statewide office, more than 50,000 telephone calls in the State of an identical or substantially similar nature within any 30-day period, or in the case of a clearly identified candidate for the General Assembly, more than 5,000 calls in the district of an identical or substantially similar nature within any 30-day period.~~

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article."

SECTION 2.(a) G.S. 163-278.81 reads as rewritten:

"**§ 163-278.81. Disclosure of Electioneering Communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that ~~makes a disbursement~~ incurs an expense for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity ~~making the disbursement,~~ incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity ~~making the disbursement.~~incurring the expense.

(2) The principal place of business of the entity ~~making the disbursement~~ incurring the expense if the entity is not an individual.

(3) The amount of each ~~disbursement~~ expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the ~~disbursement was made.~~expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all ~~contributors who contributed~~ entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds ~~contributed~~ provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(a), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date."

SECTION 2.(b) G.S. 163-278.91 reads as rewritten:

"**§ 163-278.91. Disclosure of Electioneering Communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals who ~~makes a disbursement~~ incurs an expense for the direct costs of producing and transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity ~~making the disbursement,~~ incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity ~~making the disbursement.~~ incurring the expense.

(2) The principal place of business of the entity ~~making the disbursement~~ incurring the expense if the entity is not an individual.

(3) The amount of each ~~disbursement~~ expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the ~~disbursement was made.~~ expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all ~~contributors who contributed~~ entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds ~~contributed~~ provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(c), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date."

SECTION 3.(a) G.S. 163-278.82(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing and airing any electioneering ~~communication.~~ communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources.~~For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.~~ For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article."

SECTION 3.(b) G.S. 163-278.92(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing and airing any electioneering ~~communication.~~ communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. ~~For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.~~ For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section

527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article."

SECTION 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1847

Committee Substitute Favorable 5/24/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1847-CSRR-75 [v.3]

6/29/2006 9:58:08 PM

Short Title: Electioneering Communications. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-278.80(1) reads as rewritten:

"(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is aired after an entity has ~~made disbursements~~incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has ~~made disbursements~~ incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year."

SECTION 1.(b) G.S. 163-278.90 reads as rewritten:

"**§ 163-278.90. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is transmitted after an entity has ~~made disbursements~~ incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has ~~made disbursements~~ incurred expenses for the direct costs of

producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is made within one of the following time periods:

1. 60 days before a general or special an election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

(3) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

(4) The term "mass mailing" means any mailing by United States mail or ~~facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list.~~facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(5a) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant ~~electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which:~~electorate" means:

~~a. If transmitted by mail or facsimile in connection with a clearly identified candidate for statewide office, is transmitted to 50,000 or more addresses in the State, by the transmission of identical or substantially similar matter within any 30-day period, or, in connection with a clearly identified candidate for the General Assembly, is transmitted to 5,000 or more addresses in the district, by the transmission of identical or substantially identical matter within any 30-day period.~~

~~b. If transmitted by telephone, in connection with a clearly identified candidate for statewide office, more than 50,000 telephone calls in the State of an identical or substantially similar nature within any 30-day period, or in the case of a clearly identified candidate for the General Assembly, more than 5,000 calls in the district of an identical or substantially similar nature within any 30-day period.~~

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article."

SECTION 2.(a) G.S. 163-278.81 reads a rewritten:

"**§ 163-278.81. Disclosure of Electioneering Communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that ~~makes a disbursement~~ incurs an expense for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity ~~making the disbursement,~~ incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity ~~making the disbursement.~~incurring the expense.

(2) The principal place of business of the entity ~~making the disbursement~~ incurring the expense if the entity is not an individual.

(3) The amount of each ~~disbursement~~ expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the ~~disbursement was made.~~expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all ~~contributors who contributed~~ entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds ~~contributed~~ provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(a), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date."

SECTION 2.(b) G.S. 163-278.91 reads as rewritten:

"**§ 163-278.91. Disclosure of Electioneering Communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals who ~~makes a disbursement~~ incurs an expense for the direct costs of producing and transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity ~~making the disbursement,~~ incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity ~~making the disbursement.~~incurring the expense.

(2) The principal place of business of the entity ~~making the disbursement~~ incurring the expense if the entity is not an individual.

(3) The amount of each ~~disbursement~~ expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the ~~disbursement was made.~~expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all ~~contributors who contributed~~ entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds ~~contributed~~ provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(c), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date."

SECTION 3.(a) G.S. 163-278.82(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing and airing any electioneering ~~communication.~~ communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. ~~For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.~~ For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in Section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article."

SECTION 3.(b) G.S. 163-278.92(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing and airing any electioneering ~~communication.~~ communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. ~~For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.~~ For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in Section

527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article."

SECTION 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.

HOUSE BILL 1847:
Electioneering Communications

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 29, 2006
Introduced by:	Reps. Hackney, Howard, Ross	**Summary by:**	William R. Gilkeson
Version:	PCS to Second Edition H1847-CSRR-75		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for House Bill 1847 would make the following changes to NC's statute regulating electioneering communications:

1. ***Change the way the regulations apply to mass mailings and telephone banks so that items are regulated if they refer to candidates in the same race during a 30-day period that falls within the window of electioneering communication. The items would no longer have to be "identical or substantially similar."***
2. ***Drop the "targeted to the relevant electorate" mail/phone threshold for legislative races from 5,000 to 2,500.***
3. ***Change the definition of "mass mailing" so that it no longer requires that it be made by a commercial vendor.***
4. ***Provide that the disclosure date is triggered by the expense being incurred, rather than the payment for the costs being made by the entity producing the electioneering communication.***
5. ***Clarify that in-kind as well as monetary contributions are subject to reporting as well as the prohibition on corporate, union, etc. sources.***
6. ***Require reporting not only the name but also the "principal occupation" of the donor.***
7. ***Clarify that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a payment from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only allowable source's contributions.***
8. ***Prohibit the proliferation of 527 organizations to avoid or evade prohibited source or disclosure requirements.***

The changes would be effective when they become law.

CURRENT LAW; Electioneering communications are governed by Articles 22E and 22F of Chapter 163 of the General Statutes. They are patterned after Congress's Bipartisan Campaign Reform Act (BCRA), also known as McCain-Feingold. The relevant parts of that act were upheld by the US Supreme Court in *McConnell v. FEC*, 540 US 93 (2003). Article 22E governs electioneering communications by broadcast, cable or satellite. Article 22F governs electioneering communications by mass mailings and telephone banks. The two Articles have parallel parts, dealing with definitions, disclosure, prohibited sources, and penalties.

Definitions.

"Electioneering communication." In both the broadcast and the mail/phone Articles, an "electioneering communication" is a communication that refers to a clearly identified candidate for statewide office or General Assembly, is made either 30 days before a primary or 60 days before a general election, and is "targeted to the relevant electorate."

"Targeted to the Relevant Electorate." A broadcast, cable or satellite electioneering communication is "targeted to the relevant electorate" if it can be received by 50,000 persons for a statewide office or 7,500 persons within the district for a General Assembly race. For mass mailings and telephone banks, the message is "targeted to the relevant electorate" if it is transmitted by the transmission of "identical or substantially similar" matter to 50,000 persons for a statewide office or 5,000 persons within the district for a General Assembly race.

"Mass mailings." Defined as "any mailing by United States mail or facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list."

Disclosure. If an entity is producing and communicating an electioneering communication, the entity is required to report the expenditures following the "disclosure date," the first date in a calendar year when that entity has made disbursements in excess of $10,000 and any subsequent date when it reaches another $10,000. The report must show disbursements in excess of $1,000 and the names of contributors of more than $1,000.

Prohibited Sources. In producing and communicating an electioneering communication, prohibited sources are not allowed to make disbursements for electioneering communications. Prohibited sources are generally corporations, insurance companies, labor unions, and professional associations. No individual, committee, association, or any other organization or group of individuals that has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. However, if the organization is a section 501(c)(4) organization or a 527 political organization, that organization can make a disbursement for an electioneering communication if they have taken a contribution from a prohibited source if all of the following conditions are met:

- The communication is paid for exclusively by funds provided by individuals
- The disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.

Penalties. Violations are similar to those of Article 22A, the regular campaign finance chapter: Class 2 misdemeanor and civil penalties.

BILL ANALYSIS:

The bill would:

1. Change the way the regulation applies to mass mailings and telephone banks so that items are regulated if they refer to candidates in the same race during a 30-day period that falls within the window of electioneering communication. The items would no longer have to be "identical or substantially similar." *Section 1.(b) 163-278.90(6), p. 3*
2. Drop the mail-phone bank "targeted to the relevant electorate" threshold for legislative races from 5,000 to 2,500. *Section 1.(b) 163-278.90(6), p. 3*
3. Change the definition of "mass mailing" so that it no longer requires that it be made by a commercial vendor. *Section 1.(b) 163-278.90(4), p. 2*
4. Provide that the disclosure date is triggered by the expense being incurred, rather than the payment for the costs being made by the entity producing the electioneering communication. *Section 1.(a), 163-278.80(1), p.1 and Section 1.(b) 163-278.90(1), p. 1*
5. Clarify that in-kind as well as monetary contributions are subject to reporting as well as the prohibition on corporate, union, etc. sources. *Section 2.(a), 163-278.81(b)(5), p. 4, Section 2.(b), 163-278.91(b)(5), p.5, Section 3.(a), 163-278.82(a), p.6, and Section 3.(b), 163-278.92(a), p. 6*
6. Require reporting not only the name but also the "principal occupation" of the donor. *Section 2.(a), 163-278.81(b)(5), p. 4, Section 2.(b), 163-278.91(b)(5), p. 5*
7. Clarify that any individual, committee, association, or other organization or group of individuals can produce an electioneering communication even if they have taken a payment from a prohibited source by segregating the funds to prove that the electioneering communication was produced with only allowable source's contributions. *Section 3.(a), 163-278.82(a), p. 6 and Section 3.(b), 163-278.92(a), p. 6.*
8. Prohibit the proliferation of 527 organizations to avoid or evade prohibited source or disclosure requirements. *Section 3.(a), 163-278.82(a), p. 6 and Section 3.(b), 163-278.92(a), p. 6-7.*

EFFECTIVE DATE:

The act would become effective when it becomes law, except that any criminal penalty resulting from the act becomes effective October 1, 2006.

H1847e2-SMRR-CSRR-75

Erika Churchill contributed substantially to this summary.

HOUSE BILL 1847

Short Title:	Treasurer Training.	(Public)
Sponsors:	Representatives Hackney, Howard, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Gibson, Harrison, Jones, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, Preston, Underhill, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7(f) reads as rewritten:

"(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political ~~committee, prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~office within three months of appointment, and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing~~ the training as to the duties of the ~~office,~~office in person, through ~~and shall conduct~~ regional ~~seminars for in-person training.~~ seminars, and through interactive electronic means. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the treasurer."

SECTION 2. This act becomes effective July 1, 2006.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-6-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Anthony Brown	NCAEE
Paul Meyer	NCACC
Peg Dorer	Conference of DAs
Colleen Kochanek	Smith Moore
K Strach	SBOE
Rob Thompson	NCPTRB
Michael Houser	NCAE
Doug Brown	NCBA
Chip Kelly	nelson mullins

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-6-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Catherine K Davis	ElectriCities
Ann Garland	NCEL
Bob Stevens	NCFA
Chad Hinton	Civitas Institute
Mark Tranick	Donald Beason Intern
Jeff Myrick	GPW & Assoc.
[illegible]	NCFL
Jeff Mixon	Civitas

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-6-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Howe	Libertarian Party of NC
Angie Hall	Maupin Taylor
Bruce Thompson	PARKER POE
Ed Turlington	BFM H-L
Max Memphis	Poyner + Spruill
Ed King	Green Party of NC
Ben Carroll	NC Green Party
John Maltz	GOVOPS
Lu-Ann Cole Reinzman	DLC Assoc
Amy Jo Horne	NCMS
Kathleen Edwards	UNC-CH Daily Bulletin

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-6-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
David Anders	PFFPNC
Rubl 2. O'Sin	PFFPNC
Barbara Carlin	BBOR
Stacy Flannery	NCHCFA
Adam Pridemore	NCASA
Art Pratt	NCDOL
Jennifer Haigwood	NCDOL
John Hodgin	NCDOL
Trent Brantley	NCNA
Jamie Stevens	NCNA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Friday	July 7, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 88	Electoral Fairness Act.	Representative Miller
HB 1323	Establish NC Innocence Inquiry Commission.	Representative Hackney Representative Glazier Representative Cunningham
HB 1846	Contribution Changes.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 1848	No Blank Contribution Checks.	Representative Ross Representative Hackney Representative Howard Representative Eddins
SB 1211	Blaire Thompson Drug Dealer Liability Act.	Senator Boseman

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

July 7, 2006 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:06 a.m. with sixteen members present. He introduced Pages Kaitlin Frey, Eric Burrell and Scott Possiel from Raleigh, NC, Catherine Allran, from Hickory, NC, and Nathan Sink, from Lexington, NC.

HB-1846 (Contribution Changes) Committee Substitute which was heard at the previous meeting was re-introduced by Senator Clodfelter. Senator Richard Stevens offered Amendment #1 on page 7, line 26. (See attached Amendment). All members voted yes. Motion carried. Senator Pete Brunstetter offered Amendment #2, on page 4, line 31. (See attached Amendment). All members voted yes. Amendment adopted. Senator David Hoyle offered Amendment #3, on page 2, line 32. (See attached Amendment). Amendment withdrawn. Senator Tony Rand offered Amendment #4, on page 2, lines 27 through 32. (See attached Amendment). Representative Deborah Ross had a question. The question was answered by Mr. Gilkeson. Senator Andrew moved to adopt all the Amendments and roll them into a new Committee Substitute. All members voted yes. Motion carried. Senator Brock moved for a Favorable Report. All members voted yes. Motion carried.

HB-1323 (Establish NC Innocence Inquiry Commission) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Representative Rick Glazier explained the bill would establish the NC Innocence Inquiry Commission, an eight member body appointed by the Chief Justice and Chief Judge. Its duty would be to hear claims of factual innocence by persons convicted of felonies. If at least five members of the Commission conclude there is sufficient evidence to merit judicial review, the Chief Justice shall appoint a three judge panel of the Superior Court to hold a hearing on the evidence. If the panel unanimously rules that it has been proven by clear and convincing evidence that the defendant is innocent, the panel shall dismiss the charges. Decisions of the Commission and the three judge panel could not be appealed. (See Bill Summary for further information). Senator Clodfelter and Mr. Dick Taylor, with Trial Lawyers Association, spoke on the bill. Senator's Jerry Tillman, Phillip Berger, Jeanne

Lucas, Vernon Malone, Richard Stevens, and Andrew Brock had questions. Mr. Taylor and Representative Glazier answered the questions. Senator Tony Rand moved for a Favorable Report. All members voted yes. Motion carried.

SB-1211 (Blaire Thompson Drug Dealer Liability Act.) Committee Substitute was introduced by Senator Clodfelter. Senator Julia Boseman moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Boseman explained that the bill would create the Blaire Thompson Fund, which would be a source of compensation to persons who suffer damages due to the illegal distribution of controlled substances. The Fund would be administered by the Crime Victims Compensation Commission. Drug distributors would be required to pay a transfer tax to the Department of Revenue on transferred controlled substances; monies collected from the tax would be credited to the Fund. (See attached Bill Summary and handout for further information). Staff attorney, Hal Pell explained collection of funds. Senator's Phillip Berger and Harry Brown had questions. The questions were answered by Mr. Pell. Senator Clodfelter said the bill would go to Finance Committee. Senator Boseman would work with Cindy Avrette, from Research Division, and staff attorneys to make the changes. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 10:55 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Friday, July 07, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

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

S.B. **1211** Blaire Thompson Drug Dealer Liability Act.

Draft Number:	PCS 55518
Sequential Referral:	Appropriations/Base Budget
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) **1323** Establish NC Innocence Inquiry Commission.

Draft Number:	PCS 30626
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) **1846** Contribution Changes.

Draft Number:	PCS 70797
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

Final Ed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1846

Committee Substitute Favorable 6/6/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1846-PCS70797-RR-71

Short Title: 2006 Campaign Finance Changes. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO PROHIBIT THE USE OF BLANK PAYEE CHECKS IN CAMPAIGN CONTRIBUTIONS; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE; AND TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.14(b) reads as rewritten:

"(b) No entity shall ~~give, make,~~ and no candidate, committee or treasurer shall accept, any monetary contribution in excess of ~~one hundred~~ fifty dollars ~~($100.00)~~ ($50.00) unless such contribution ~~be~~ is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No contribution in the form of check, draft, money order, credit card charge, debits, or other noncash method may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record."

SECTION 2. G.S. 163-278.20 is repealed.

SECTION 3. G.S. 163-278.19(b) reads as rewritten:

"(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, ~~except as provided in G.S. 163-278.20,~~ and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever."

SECTION 4. G.S. 163-278.8 reads as rewritten:

"**§ 163-278.8. Detailed accounts to be kept by political treasurers.**

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee. The accounts shall include the information required by the State Board of Elections on its forms.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) Repealed by Session Laws 2004-125, s. 5(a), effective July 20, 2004, and applicable to contributions made on or after January 1, 2003.

~~(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars ($100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars ($100.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of one hundred dollars ($100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to~~

~~campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars ($100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars ($100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars ($100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt.~~

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers."

SECTION 5. G.S. 163-278.11 reads as rewritten:

"**§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.**

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) Contributions. – Except as provided in subsection (a1) of this section, ~~A~~ a list of all contributions ~~required to be listed under G.S. 163-278.8~~ received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, "principal occupation of the contributor" means the contributor's:

a. Job title or profession; and
b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(3) Loans. – Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(a1) Threshold for Reporting Identity of Contributor. – A treasurer shall not be required to report the name, address, or principal occupation of any individual resident of the State who contributes fifty dollars ($50.00) or less to the treasurer's committee during an election as defined in G.S. 163-278.13. The State Board of Elections shall provide on its reporting forms for the reporting of contributions below that threshold. On those reporting forms, the State Board may require date and amount of contributions below the threshold, but may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) Best Efforts. – When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this ~~Article.~~Article and shall not be the basis for criminal prosecution

or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include ~~the~~ a provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain"."

SECTION 5.1. G.S. 163-278.9(g) reads as rewritten:

"(g) Any report filed under subsection (e) of this section must contain all the information required by ~~G.S. 163-278.8 or~~ G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold."

SECTION 5.2. G.S. 163-278.14(a) reads as rewritten:

"(a) No individual, political committee, or other entity shall make any contribution anonymously, except as provided in G.S. ~~163-278.8(d),~~ 163-278.11(a1), or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously except as provided in G.S. ~~163-278.8(d).~~ 163-278.11(a1). If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina."

SECTION 6. G.S. 163-278.15 reads as rewritten:

"**§ 163-278.15. No acceptance of contributions made by corporations, foreign and ~~domestic.~~domestic, or other prohibited sources.**

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North ~~Carolina.~~ Carolina, or made by any business entity, labor union, professional association, or insurance company. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

SECTION 7. G.S. 163-278.7 reads as rewritten:

"**§ 163-278.7. Appointment of political treasurers.**

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. – When the political

committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the ~~treasurer,~~ candidate, political committee, or referendum committee ~~who~~ and shall be fully responsible for any act or acts committed by ~~an~~ the assistant ~~treasurer,~~treasurer. ~~and the~~The treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) ~~The State Board of Elections shall provide training for every~~Every treasurer of a political ~~committee, prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~office within three months of appointment and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing~~ the training as to the duties of the ~~office,~~office in person, through ~~and shall conduct~~ regional ~~seminars for in-person training.~~ seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the ~~treasurer.~~treasurer and assistant treasurer."

SECTION 8. G.S. 163-278.9 is amended by adding a new subsection to read:

"(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f)."

SECTION 9. Sections 1 through 6 of this act become effective January 1, 2007, and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163-278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1846

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

H1846-ARR-126 [v.1]

Date 7-7 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1846-CSRR-71[v.5]

Senator Stevens

moves to amend the bill on page 7, line 26,
by inserting before the word "unlawful" the term "lawful or".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1846 DATE 7-7-06

S. B. No. _____ Amendment No. #2

COMMITTEE SUBSTITUTE ✓ (to be filled in by Principal Clerk)

Rep.)
Sen.) BRUNSTETTER

1 moves to amend the bill on page 4, line 31

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the term "cycle" and substituting

4

5 the term "as defined in G.S. 163-278.13"

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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1846

AMENDMENT NO. #3
(to be filled in by
Principal Clerk)

H1846-ARR-128 [v.1]

Date 7-7 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1846-CSRR-71[v.5]

Senator Hoyle

moves to amend the bill on page 2, line 32,
by adding at the end of that line the following:

"If a treasurer inadvertently receives a cash contribution and cannot determine its source, the treasurer ~~may~~ SHALL donate the amount to charity."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

WITHDRAWN

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1846

AMENDMENT NO. #4
(to be filled in by
Principal Clerk)

H1846-ARR-143 [v.1]

Date 7-7 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1846-CSRR-

Senator Rand

moves to amend the bill on page 2, lines 27 through ~~29~~ 32,
by rewriting those lines to read:

"committee and referendum committee. The accounts shall include the information required by the State Board of Elections on its forms."

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 1846:
2006 Campaign Finance Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	June 21, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	William R. Gilkeson
Version:	Second Edition -- H1846-CSRR-71		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for House Bill 1846 drops the thresholds for both accepting contributions in cash and for reporting the identity of a contributor from $100 to $50. It clarifies that the $50 identity reporting threshold is measured per election cycle. It prohibits the use of contribution checks and other instruments in which the payee blank is not filled in with the intended recipient of the contributor's choice. It adds a penalty for accepting contributions from certain sources that are prohibited from making contributions. It bars prosecution if a campaign treasurer uses the "best efforts" prescribed by the State Board of Elections to obtain the required information. And it requires treasurers to take training within 3 months of taking the office and every 4 years thereafter. This PCS modifies and merges three bills recommended by the House Select Committee on Ethics and Governmental Reform and passed by the House.

Sec. 1. Cash Contribution Threshold at $50. Currently, the law says no political contribution may be made or accepted in cash in excess of $100. ***This section drops that threshold to $50. Effective 1-1-07.***

Secs. 1, 2, & 3. No Blank Contribution Checks. Currently, the law is silent on whether a contributor can make a contribution leaving the instrument blank for someone else to fill in. ***Section 1 says no contribution using a check or other non-cash instrument may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. Sections 2 and 3 remove an old statute, GS 163-278.20, (and a reference to that statute) that has been cited on the issue of blank payee contributions. Effective 1-1-07.***

Secs. 4 & 5. Threshold for Reporting Contributor's Identity at $50. Currently, the law says treasurers must keep detailed accounts of every contribution. But if the contributor is an individual NC resident, the treasurer is required to report name, address, and principal occupation only if the contributor gives more than $100. ***Section 5 lowers the reporting of the contributor's identity from $100 to $50. It also specifies that the threshold is measured by all cumulative contributions from the same contributor during the same election cycle. "Election cycle" is a defined term that basically means the term of the office. Sections 4 and 5 together rearrange some statutory language to make clear that a treasurer must keep a record of certain information about each contribution, regardless of the size or form of the contribution or where it was received. The rewriting of those sections also provides that the State Board of Elections may have flexibility in providing on its forms for the reporting of sub-threshold contributions, as long as reporting the identity of the contributor is not required. Effective 1-1-07.***

Secs. 5 & 6. No Acceptance of Contributions That Can't Be Made; Best Efforts. Currently, the law prohibits corporations, other business entities, labor unions, professional associations, and insurance companies from making contributions. But accepting a contribution from the entities on that list is

prohibited only if the source is a corporation. ***Section 6 prohibits accepting contributions from the other prohibited sources on the list. In a related provision, the last part of Section 5 provides that prosecution is barred if a treasurer employs "best efforts," according to rules to be adopted by the State Board of Elections, to obtain the information required by the Article. However, if despite best efforts an illegal contribution is accepted, the Board can require it to be forfeited. Effective 1-1-07.***

Secs. 7 & 8. Treasurer Training. As a result of legislation enacted in 2005, the State Board of Elections is required to provide training for treasurers of political committees prior to the election in which the committee is involved. The training must be free. It must be available by electronic means and through regional in-person seminars. But treasurers are not required to take it. ***Section 7 requires every treasurer of a political committee to take State Board training within three months of appointment and every four years thereafter. The State Board must provide the training in person, in regional seminars, and through interactive electronic means. Section 7 provides for the appointment of an assistant treasurer to act for the committee, and if so the treasurer may designate the assistant to take the training. Section 8 says all reports must be filed by a treasurer or assistant treasurer who has taken the training. Effective 10-1-06.***

H1846e2-SMRR

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

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Terrence D. Sullivan
Director

To: Senate Judiciary 1 Committee

From: William R. Gilkeson, Co-Counsel

Re: "First Dollar" Disclosure

You have asked about the constitutionality of requiring that a campaign must report, for every contribution, regardless of how small, the identity of the contributor. Thomas J. Schwedler, a UNC law student who is one of our interns, has assisted in researching this question. Here is what we have found:

Case Law on First-Dollar Disclosure: Unsettled. The US Supreme Court has not addressed the question of first-dollar disclosure. In 1993 a Rhode Island US district court found first-dollar disclosure unconstitutional per se. *Vote Choice, Inc. v Di Stefano, 814 F. Supp. 195 (1993).* That per se ruling was reversed by the First Circuit, which nonetheless held the statute in question unconstitutional because it was applied to political action committees only: PACs had to disclose their smallest contributors but candidates only had to disclose contributors over $100. The court found that disparity unjustified and said it placed an uneven burden on people who take political action in association with others rather than by acting alone. *Vote Choice, Inc. v Di Stefano, 4 F. 3d 26 (1993)* In 2000, a first-dollar disclosure statute was upheld by a U.S. District Court in New York, not for general use but as part of a voluntary public financing plan. The court there said the State had an overriding interest in determining whether a candidate was following the rules in applying for public money. *Herschaft v NYC Campaign Finance Board, 127 F. Supp. 2d 164 (2000).* Two states have adopted first-dollar disclosure, West Virginia and Florida. We find no court challenges to either state's plan.

Possibility of Unconstitutionality. I am not convinced, however, that first-dollar disclosure would survive another per se challenge if brought by the right plaintiff, as I will explain later.

***Buckley v. Valeo* Background.** As in most aspects of campaign finance law, everything points back to *Buckley v Valeo, 424 US 1,* the landmark Supreme Court case of 1976. That case upheld the federal reporting threshold of $100. It recognized that compelled disclosure "can seriously infringe on [the] privacy of association and belief guaranteed by the First Amendment." A statute compelling disclosure would be subjected to "exacting scrutiny." It would be upheld only if it served a compelling governmental interest, and there must be a "substantial relation" between the compelling interest and the information to be disclosed. The *Buckley* court recognized three compelling state interests that could justify compelled disclosure:

1. Enhancing the voter's information about a candidate's possible allegiances and interests.
2. Deterring actual and apparent corruption.
3. Gathering data to detect violations of and to enforce contribution limits.

The Buckley court found that all three interests were served by the more-than-$100 disclosure requirements for contributors in the federal law. The 1st Circuit in *Vote Choice*, above, found that there was not really a substantial relation between the identity of a $1 contributor and # 2 about corruption or # 3 about enforcing the contribution limits. It found there was, however, a substantial relation between disclosure of the smallest contributor and # 1, enhancing the voter's knowledge about a candidate's possible allegiances and interests. It was on that basis that the Vote Choice court refused to affirm the lower court's decision to hold first-dollar disclosure unconstitutional per se.

As to how low the required disclosure could go, the *Buckley* court found that they could not say $100 was too low. It said the threshold "is indeed low. Contributors of relatively small amounts are likely to be especially sensitive to recording or disclosure of their political preferences. These strict limitations may well discourage participation by some citizens in the political process, a result that Congress hardly could have intended. . . . But we cannot require Congress to establish that it has chosen the highest reasonable threshold. The line is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion." There is a hint in that language that the *Buckley* court thought some threshold was needed, but it did not directly say so.

Special Protection From Intimidation. Among those challenging the federal statute in *Buckley* were some minor parties. They argued that there is a real possibility that disclosure of a minor party's contributors would visit harassment and intimidation against them that would substantially interfere with the exercise of First Amendment rights. They cited the case of *NAACP v Alabama*, 357 US 449 (1958), in which the Supreme Court protected that organization from being forced to turn over a list of its members to the State. The minor parties argued to the *Buckley* court that there should be a blanket exemption for minor parties. Instead, the court concluded thus: "Where it exists the type of chill and harassment identified in *NAACP v Alabama* can be shown. We cannot assume that courts will be insensitive to similar showings when made in future cases. We therefore conclude that a blanket exemption is not required." Indeed, the Supreme Court held, in *Brown v Socialist Workers (Ohio)*, 459 US 87 (1982), that the plaintiffs there had made the showing of harassment and were entitled to exemption from disclosure of contributors – not just $1 contributors, but all contributors.

Right of Anonymous Political Speech. The US Supreme Court in *McIntyre v Ohio Election Commission*, 514 US 334 (1995), recognized a right, albeit not an absolute one, to anonymous political speech. The court struck down an Ohio statute that prohibited the distribution of any campaign literature unless it contained the name of the author. The plaintiff was fined for distributing an unsigned leaflet opposing a tax proposal in a referendum. The court found the statute overbroad, but distinguished its opinion from *Buckley*, partly on the basis that it was considering required disclosure of independent speech about an issue, rather than disclosure of a contribution to a candidate. Perhaps a lesson from *McIntyre* that can be applied to first-dollar disclosure is that the case for first-dollar disclosure is weaker if the contribution being disclosed involves a ballot issue rather than a candidate.

Possibility of Unconstitutionality. The plaintiffs we have seen challenging first-dollar disclosure and general disclosure have primarily been candidates and parties, objecting to the requirement that they disclose their contributors. What we have not seen is a challenge brought by a potential contributor who asserts being chilled from participation by the fear of reprisal from employer or community if his or her small contribution is made public. Such a person would have a genuine First Amendment concern, but not one that could be easily remedied by the kind of protective order the Supreme Court contemplated in *Buckley* for minor parties and provided in *Brown v Socialist Workers*. A potential contributor representing a class of, for example, at-will private employees in jobs where discretion is expected in political matters, could argue that they are effectively barred from the political arena by first-dollar disclosure. They could argue they cannot reasonably be expected to pay legal fees to seek special court protection every time they wish to participate – only a threshold on disclosure of contributors will provide relief.

The *Buckley* court's deference to the legislative branch in setting a threshold for disclosure is reminiscent of its deference over contribution limits. The court said it had "no scalpel to probe" the proper contribution limit, and for 30 years it never held a contribution limit unconstitutionally low – until last week in *Randall v Sorrell*, the Vermont case. Were the right case to come along, it is not hard to imagine the Court finding a disclosure threshold that is too low.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1846

Short Title:	Contribution Changes.	(Public)
Sponsors:	Representatives Hackney, Howard, Eddins, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Gibson, Harrison, Justice, Lucas, Luebke, McLawhorn, Martin, Nye, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, McGee, Moore, Stiller, Underhill, Walker, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS BY MONEY ORDER; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; AND TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.14(b) reads as rewritten:

"(b) No entity shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of ~~one hundred~~ fifty dollars ~~($100.00)~~ ($50.00) unless such contribution be in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record."

SECTION 2. G.S. 163-278.8(d) reads as rewritten:

"(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars ($100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars ($100.00) or less, the amount of the contribution, and the date of receipt. However, if a contribution is made by money order, the treasurer shall report the name of the contributor if the amount is more than fifty dollars ($50.00). If a treasurer receives contributions of one hundred dollars ($100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars ($100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars ($100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars ($100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt. For purposes of the reporting threshold of this subsection, the one hundred dollars ($100.00) shall be an amount contributed during any election cycle."

SECTION 3. G.S. 163-278.15 reads as rewritten:

"**§ 163-278.15. No acceptance of contributions made by corporations, foreign and ~~domestic.~~domestic, or other prohibited sources; best efforts.**

(a) No Acceptance. – No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North ~~Carolina.~~ Carolina, or made by any labor union, professional association, insurance company, or business entity. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f).

(b) Best Efforts. – When a treasurer shows that best efforts have been made to ensure that contributions are from legal contributors and not from a prohibited source, acceptance of the contribution shall not be the basis for imposition of civil penalties, other than forfeiture of the contribution itself, or for criminal prosecution. The State Board of Elections shall adopt rules that specify what are "best efforts" for purposes of this section. Those rules shall recognize that in some instances contribution checks and other instruments clearly disclose to the contributee that the contribution comes from a prohibited source and must not be accepted, but that in other instances a contribution from a prohibited source is not clearly disclosed on the instrument and the contributee may reasonably believe the contribution is from an individual's personal funds. The State Board shall coordinate the rules with rules required by G.S. 163-278.11(b) for best efforts to obtain, maintain, and submit information on reports required by this Article, so that the contributee can comply with the rules by using one form or a minimal

number of forms to try to obtain needed statements from the contributor. If, despite the use of best efforts, the State Board of Elections determines that a contribution was made from the account of a prohibited contributor, the State Board may order that the amount unlawfully received be paid to the State Board by check, and any money so received by the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North Carolina."

SECTION 4. This act becomes effective January 1, 2007, and applies to all contributions made and accepted on and after that date.

Final Ed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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HOUSE BILL 1323*

Committee Substitute Favorable 8/10/05
Third Edition Engrossed 8/11/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1323-PCS30626-RU-103

Short Title: Establish NC Innocence Inquiry Commission. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new article to read:

"Article 92.

"North Carolina Innocence Inquiry Commission.

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable

evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

(2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.

(3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.

(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

"**§ 15A-1461. Purpose of Article.**

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article.

"**§ 15A-1462. Commission established.**

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission.

"**§ 15A-1463. Membership; chair; meetings; quorum.**

(a) The Commission shall consist of eight voting members as follows:

(1) One shall be a superior court judge.

(2) One shall be a prosecuting attorney.

(3) One shall be a victim advocate.

(4) One shall be engaged in the practice of criminal defense law.

(5) One shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(6) One shall be a sheriff holding office at the time of his or her appointment.

(7) The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice.

The Chief Justice of the North Carolina Supreme Court shall make the initial appointment for members identified in subdivisions (4) through (6) of this subsection. The Chief Judge of the Court of Appeals shall make the initial appointment for members identified in subdivisions (1) through (3) of this subsection. After an appointee has served his or her first three-year term, the subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing power, except for the two discretionary appointments identified by subdivision (7) of this subsection which shall be appointed by the Chief Justice.

(a1) The appointing authority shall also appoint alternate Commission members for the Commission members he or she has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a

particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the appointing authority shall make a good faith effort to appoint members with different perspectives of the justice system. The appointing authority shall also consider geographical location, gender, and racial diversity in making the appointments.

(b) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2007, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote.

"**§ 15A-1464. Terms of members; compensation; expenses.**

(a) Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and three appointments shall be for three-year terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this act, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office, except for the sheriff, may serve only so long as the officeholders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

"**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff.

"§ 15A-1466. Duties.

The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.

(3) To coordinate the investigation of cases accepted for review.

(4) To maintain records for all case investigations.

(5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.

(6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source.

"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The Commission shall not consider a claim of factual innocence if the convicted person entered and was convicted on a guilty plea or the convicted person is deceased. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The waiver under this subsection does not apply to matters unrelated to a convicted person's claim of innocence. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person's counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the Commission Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain

information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming innocence.

(g) If, at any point during an inquiry, the convicted person refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

"**§ 15A-1468. Commission proceedings.**

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

If five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases.

If less than five of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The

Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

"**§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the convicted person. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

"**§ 15A-1470. No right to further review of decision by Commission or three-judge panel; convicted person retains right to other postconviction relief.**

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion, or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the convicted person's rights to other postconviction relief."

SECTION 2. G.S. 15A-1401 reads as rewritten:

"**§ 15A-1401. Post-trial motions and appeal.**

Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

(1) Motion for appropriate relief, as provided in Article 89.

(1a) Motion for innocence claim inquiry as provided in Article 92 of Chapter 15A of the General Statutes.

(2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.

(3) Appeal, as provided in Article 91."

SECTION 3. G.S. 15A-1417(a) reads as rewritten:

"(a) The following relief is available when the court grants a motion for appropriate relief:

(1) New trial on all or any of the charges.

(2) Dismissal of all or any of the charges.

(3) The relief sought by the State pursuant to G.S. 15A-1416.

(3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.

(4) Any other appropriate relief."

SECTION 4. G.S. 15A-1411 reads as rewritten:

"**§ 15A-1411. Motion for appropriate relief.**

(a) Relief from errors committed in the trial division, or other post-trial relief, may be sought by a motion for appropriate relief. Procedure for the making of the motion is as set out in G.S. 15A-1420.

(b) A motion for appropriate relief, whether made before or after the entry of judgment, is a motion in the original cause and not a new proceeding.

(c) The relief formerly available by motion in arrest of judgment, motion to set aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all other post-trial motions is available by motion for appropriate relief. The availability of relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus.

(d) A claim of factual innocence asserted through the North Carolina Innocence Inquiry Commission does not constitute a motion for appropriate relief and does not impact rights or relief provided for in this Article."

SECTION 5. G.S. 15A-1418(b) reads as rewritten:

"(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for taking evidence or conducting other ~~proceedings.~~ proceedings, or, for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case."

SECTION 6. G.S. 143-318.18 is amended by adding a new subdivision to read:

"(3a) The North Carolina Innocence Inquiry Commission."

SECTION 7. G.S. 132-1.4 reads as rewritten:

"**§ 132-1.4. Criminal investigations; intelligence information ~~records.~~records; Innocence Inquiry Commission records.**

(a) Records of criminal investigations conducted by public law enforcement ~~agencies or~~agencies, records of criminal intelligence information compiled by public law enforcement ~~agencies~~agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

...."

SECTION 8. In order to allow staggered terms of members of the North Carolina Innocence Inquiry Commission, as required by G.S. 15A-1464(a) as enacted by this act, the Commission members identified in G.S. 15A-1463(a)(1), (2), and (4) shall be appointed to initial terms of two years, the Commission members identified in G.S. 15A-1463(a)(3), (5), and (6) shall be appointed to initial terms of three years, and the Commission members identified in G.S. 15A-1463(a)(7) shall be appointed to initial terms of one year.

SECTION 9. Beginning January 1, 2008, and annually thereafter, the North Carolina Innocence Inquiry Commission shall report on its activities to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council. The report may contain recommendations of any needed

legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under this act. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General.

SECTION 10. The State Judicial Council shall report to the General Assembly and the Chief Justice no later than December 31, 2009, and no later than December 31 of every third year, regarding the implementation of this act and shall include in its report the statistics regarding inquiries and any recommendations for changes. The House of Representatives and the Senate shall refer the report of the State Judicial Council to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and such other committees as the Speaker of the House of Representatives or the President Pro Tempore of the Senate shall deem appropriate, for their review.

SECTION 11. The initial members of the North Carolina Innocence Inquiry Commission shall be appointed not later than October 1, 2006. No claims of actual innocence may be filed with the Commission until November 1, 2006.

SECTION 12. This act is effective when it becomes law and applies to claims of factual innocence file on or before December 31, 2010.

HOUSE BILL 1323:
Establish NC Innocence Inquiry Commission

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 7, 2006
Introduced by:	Reps. Glazier, Hackney, Cunningham	**Summary by:**	O. Walker Reagan
Version:	PCS to Third Edition H1323-CSRU-103		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for HB 1323 would establish the NC Innocence Inquiry Commission, a 8-member body appointed by the Chief Justice and Chief Judge. Its duty would be to hear claims of factual innocence by persons convicted of felonies. If at least five members of the Commission conclude there is sufficient evidence to merit judicial review, the Chief Justice shall appoint a 3-judge panel of the Superior Court to hold a hearing on the evidence. If the panel unanimously rules that it has been proven by clear and convincing evidence that the defendant is innocent, the panel shall dismiss the charges. Decisions of the Commission and the 3-judge panel could not be appealed. Effective when the bill becomes law.***

CURRENT LAW: Under existing law, a person convicted of a felony may appeal to an appellate court based on errors other than evidence, or the defendant may make a motion for appropriate relief from the trial court.

In 2002, Chief Justice I. Beverly Lake Jr. established the NC Actual Innocence Commission to study issues related to people being wrongly convicted of crimes they did not commit. That Commission recommended the Commission that would be established by this bill.

BILL ANALYSIS: The bill establishes the NC Innocence Inquiry Commission. It creates a new Article 92 in Chapter 15A. *Section 1 of bill.*

Administration. The Commission would be housed administratively within the Judicial Department and supported by the Administrative Office of the Court, but it would be an independent body. The eight members of the Commission would be appointed by the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals. Of those, there must be a Superior Court judge, a prosecutor, a victim advocate, a criminal defense attorney, a sheriff, a layperson and 2 other persons. The judge would be chair. Once the terms are fully phased in, the members would serve staggered 3-year terms. They would be limited to 2 consecutive terms. They would hire an attorney as Director and could hire other staff. *New G.S. 15A-1461 through 15A-1465.*

Claims of Factual Innocence. The Commission's chief duty would be to conduct inquiries into "claims of factual innocence," defined in the bill as a claim on behalf of a living person convicted of a felony in the NC courts, asserting that person's complete innocence of criminal responsibility for that felony and for any other reduced level of criminal responsibility related to the crime. There must be credible, verifiable evidence of innocence that has not previously been presented. *G.S. 15A-1460 and 15A-1466.*

Initiating an Inquiry. Anyone could present a claim of factual innocence to the Commission. The Commission would have discretion whether to conduct an inquiry. It could not conduct an inquiry unless it received a signed statement from the defendant waiving procedural safeguards and privileges and agreeing to cooperate with the Commission. The defendant has the right to advice of counsel before signing the agreement and during the inquiry. *G.S. 15A-1467.*

Commission's Proceedings. In conducting the inquiry, the Commission would have the discretion whether to conduct public hearings. The victim of the crime (or if the victim is dead, the victim's next of

kin) must be notified if feasible at least 30 days prior to proceedings of the full Commission. The victim would have a limited right to attend non-public hearings. After hearing the evidence the Commission would vote, with all members present, on whether there is sufficient evidence of factual innocence to merit judicial review. If five or more members voted "yes," the Commission would forward its opinion, as well as the record in support of it, to the senior resident Superior Court judge of the district of original jurisdiction in the case. If five members do not vote "yes," the Commission would document its opinion and send the document to the clerk of court in the district of original jurisdiction, with copies to the DA and the senior resident Superior Court judge. Evidence of criminal acts, professional misconduct, or other wrongdoing would be referred to the appropriate authority. Evidence favorable to the defendant would be disclosed to the defendant and defendant's counsel. Due diligence would be used to notify the victim of the result. *G.S. 15A-1468.*

Open Meetings and Public Records. The Commission's proceedings and records would be confidential and exempt from the Open Meetings and Public Records laws, except that if the Commission votes that there is sufficient evidence of factual innocence, the supporting records of that finding become public when referred to Superior Court. That includes all files and materials considered by the Commission and transcripts of its hearings. If the Commission votes there is not sufficient evidence of factual innocence, the records stay closed. *G.S. 15A-1468.*

Postcommission 3-Judge Panel. If five or more members find sufficient evidence and the Commission sends the case to Superior Court, the chair of the Commission must request the Chief Justice to appoint a 3-judge panel of trial judges who have not had previous involvement in the case. The senior of those judges would preside. The 3-judge panel would hear evidence in a special session of Superior Court in the district of original jurisdiction of the case. The State would have 60 days after the hearing is set to file a response to the Commission's opinion. The DA would represent the State at the hearing. The panel could compel the testimony of any witness, including the defendant. The defendant has the right to be present at the hearing and be represented by counsel, but may not assert any privilege or prevent a witness from testifying. The victim would be notified 30 days before the hearing. The 3-judge panel would have to determine whether there is "clear and convincing evidence" (higher than "by the greater weight of the evidence" but lower than "beyond a reasonable doubt") that the defendant is innocent of the charges. If the 3 judges are unanimous in saying "yes," they are required to dismiss the charges. If they are not unanimous, they must deny relief. *G.S. 15A-1469.*

Panel's Decision is Final. The bill provides that the decisions of the Commission and the 3-judge panel are final and not subject to further review by appeal, certification, writ, or motion. But a claim of factual innocence through the Commission would not adversely affect the defendant's rights to other post-conviction relief. *G.S. 15A-1470.*

Sections 2, 3, 4, and 5 of the bill add referring a case to the Commission as an option in seeking and granting relief under existing statutes. Section 6 adds the Commission to the public bodies exempted from the Open Meetings Law. Section 7 makes the Commission records of investigations exempt from the Public Records Law. Section 8 staggers the initial terms of the members of the Commission. Section 9 requires annual reports by the Commission to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Counsel. Section 10 requires the State Judicial Council every three years on the statistics of the program and recommended changes.

Steve Rose, co-counsel to the House Judiciary IV Committee and William R. Gilkeson, co-counsel to the Senate Judiciary I Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1323*

Short Title:	Establish NC Innocence Inquiry Commission.	(Public)
Sponsors:	Representatives Glazier, Hackney, Cunningham (Primary Sponsors); Alexander, B. Allen, Bordsen, Dickson, Fisher, Goforth, Haire, Harrison, Insko, Jones, Lucas, Luebke, Miller, Parmon, Rapp, Ross, Tucker, Wainwright, Weiss, and Womble.	
Referred to:	Judiciary IV.	

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new article to read:

"Article 92.

"North Carolina Innocence Inquiry Commission.

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is credible, verifiable

evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

(2) "Commission" means the North Carolina Inquiry Commission established by this Article.

(3) "Director" means the Director of the North Carolina Inquiry Commission.

(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

"**§ 15A-1461. Purpose of Article.**

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article.

"**§ 15A-1462. Commission established.**

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission but shall be located under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission.

"**§ 15A-1463. Membership; chair; meetings; quorum.**

(a) The Commission shall consist of seven voting members appointed by the Chief Justice of the North Carolina Supreme Court. Of the seven members, one shall be a superior court judge, one shall be a prosecuting attorney, one shall be a victim advocate, one shall be engaged in the practice of criminal defense law, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department. The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice. The Chief Justice shall also appoint alternate Commission members to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the Chief Justice shall make a good faith effort to appoint members with different perspectives of the justice system. The Chief Justice shall also consider geographical location, gender, and racial diversity in making the appointments.

(b) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2006, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote unless specified otherwise by this Article.

"**§ 15A-1464. Terms of members; compensation; expenses.**

(a) The initial appointments shall be made within 30 days of the effective date of this section. Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and two appointments shall be for three-year terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this section, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office may serve only so long as the officeholders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

"**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff.

"**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.

(3) To coordinate the investigation of cases accepted for review.

(4) To maintain records for all case investigations.

(5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.

(6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source.

"**§ 15A-1467. Claims of innocence; waiver of defendant's procedural safeguards and privileges; formal inquiry; notification of the crime victim.**

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The determination of whether to grant a formal inquiry regarding a claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the defendant in which the defendant waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The defendant shall have the right to advice of counsel prior to the execution of the agreement and, if counsel represents the defendant, then the defendant's counsel must be present at the signing of the agreement. If counsel does not represent the defendant, the Commission Chair shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the defendant were currently being tried for the charge for which the defendant is claiming innocence.

(g) If, at any point during an inquiry, the defendant refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

"§ 15A-1468. Commission proceedings.

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All seven voting members of the Commission shall participate in that vote.

If five or more of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases.

If less than five of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the defendant disclosed through formal inquiry or Commission proceedings shall be disclosed to the defendant and the defendant's counsel, if the defendant has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the

superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

"**§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the senior resident superior court judge shall request the Chief Justice appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the defendant. The defendant may not assert any privilege or prevent a witness from testifying. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent defendant of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the defendant has proved by clear and convincing evidence that the defendant is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

"**§ 15A-1470. No right to further review of decision by Commission or three-judge panel; defendant retains right to other postconviction relief.**

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the defendant's rights to other postconviction relief."

SECTION 2. G.S. 15A-1401 reads as rewritten:

"**§ 15A-1401. Post-trial motions and appeal.**

Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

(1) Motion for appropriate relief, as provided in Article 89.

(1a) Motion for innocence claim inquiry as provided in Article 92 of Chapter 15A of the General Statutes.

(2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.

(3) Appeal, as provided in Article 91."

SECTION 3. G.S. 15A-1417(a) reads as rewritten:

"(a) The following relief is available when the court grants a motion for appropriate relief:

(1) New trial on all or any of the charges.

(2) Dismissal of all or any of the charges.

(3) The relief sought by the State pursuant to G.S. 15A-1416.

(3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.

(4) Any other appropriate relief."

SECTION 4. G.S. 15A-1418(b) reads as rewritten:

"(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for taking evidence or conducting other ~~proceedings.~~ proceedings, or , for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case."

SECTION 5. G.S. 143-318.18 is amended by adding a new subdivision to read:

"(3a) The North Carolina Innocence Inquiry Commission."

SECTION 6. This act is effective when it becomes law.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1211
PROPOSED COMMITTEE SUBSTITUTE S1211-PCS55518-RK-67

Short Title: Blaire Thompson Drug Dealer Liability Act. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO CREATE THE BLAIRE THOMPSON FUND IN ORDER TO PROVIDE COMPENSATION FOR DAMAGES RESULTING FROM THE ILLEGAL DISTRIBUTION OF CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. This Act shall be known and may be cited as the 'Blaire Thompson Act.' The purpose of this act is to provide damages to persons in a community injured by an individual's use of illegal drugs. It establishes a transfer tax payable by drug dealers that will be directed to a fund for damages incurred as a result of an individual's use of an illegal controlled substance. This Article will shift the cost of the damage caused by the marketing of illegal drugs to those who illegally profit from that market, as well as deter others from entering the illegal drug market by subjecting them to substantial monetary loss.

SECTION 2. G.S. 15B-2 reads as rewritten:

"...

(4a) "Controlled substance" has the same definition as set forth in G.S. 90-87.

...

(5) "Criminally injurious conduct" is defined as:

a. ~~means conduct~~ Conduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State. ~~Criminally injurious conduct includes conduct~~

b. Conduct that amounts to an offense involving impaired driving as defined in G.S. 20-4.01(24a), and conduct that amounts to a violation of G.S. 20-166 if the victim was a pedestrian or was

operating a vehicle moved solely by human power or a mobility impairment device. For purposes of this Article, a mobility impairment device is a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General Statutes.

c. The illegal distribution or transfer of controlled substances.

d. Conduct that constitutes ~~Criminally injurious conduct shall also include~~ an act of terrorism, as defined in 18 U.S.C. § 2331, that is committed outside of the United States against a citizen of this State.

...

(12b) "Transfer" has the same definition as set forth in G.S. 105-113.106.

..."

SECTION 3. G.S. 15B-6(a) reads as rewritten:

"**§ 15B-6. Powers of the Commission and Director.**

(a) In addition to powers authorized by this Article and Chapter 150B, the Commission may:

(1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and Article 2A of Chapter 150B of the General Statutes necessary to carry out the purposes of this Article;

(2) Establish general policies and guidelines for awarding compensation and provide guidance to the staff assigned by the Secretary of the Department of Crime Control and Public Safety to administer the program;

(3) Accept for any lawful purpose and functions under this Article any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm, or corporation, and may deposit the same to the Crime Victims Compensation ~~Fund.~~Fund or the Blaire Thompson Fund."

SECTION 4. G.S. 15B-7(a) reads as rewritten:

"**§ 15B-7. Filing of application for compensation award; contents.**

(a) A claim for an award of compensation from the Crime Victims Compensation Fund or the Blaire Thompson Fund is commenced by filing an application for an award with the Director. The application shall be in a form prescribed by the Commission and shall contain the following information:

...."

SECTION 5. G.S. 15B-8 reads as rewritten:

"**§ 15B-8. Procedure for filing application.**

(a) The Director shall establish procedures for screening, filing, recording, investigating, and processing applications for an award of compensation. The Director shall also establish the procedures and methods for processing follow-up claims for compensation. The procedures and methods established by the Director under this subsection shall conform to any rules adopted by the Commission.

(b) Repealed by Session Laws 1987, c. 819, s. 14.

(c) The Director shall establish the procedures described in subsection (a) of this section for applications for compensation from the Blaire Thompson Fund.

(1) Only persons who have suffered damages proximately caused by the illegal use of a controlled substance are qualified as claimants who are eligible to apply for, and to receive, an award of compensation from the Blaire Thompson Fund.

(2) Notwithstanding any other provision of this Article, claimants applying for compensation from the Blaire Thompson Fund shall not have an award withheld or reduced based upon either the criminal misconduct or contributory negligence of the claimant or the victim of the criminally injurious conduct."

SECTION 6. G.S. 15B-18 reads as rewritten:

"**§ 15B-18. Subrogation by State.**

(a) If compensation is awarded, the Crime Victims Compensation Fund or the Blaire Thompson Fund is subrogated to all the claimant's rights to receive or recover benefits or advantages for economic loss from a source that is, or if readily available to the victim or claimant would be, a collateral source, to the extent of the compensation awarded.

(b) The Crime Victims Compensation Fund and the Blaire Thompson Fund are~~is an eligible recipient~~ eligible recipients for restitution under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant shall give the Commission prior written notice of the proposed action. After receiving the notice the Commission shall immediately notify the Attorney General who shall promptly:

(1) Join in the action as a party plaintiff to recover compensation awarded;

(2) Require that the claimant bring the action in his individual name as a trustee in behalf of the State to recover compensation awarded; or

(3) Reserve its rights and do neither in the proposed action. If, as requested by the Attorney General, the claimant brings the action as trustee and recovers compensation awarded from the Crime Victims Compensation Fund, he may deduct from the compensation recovered in behalf of the State the reasonable expenses, including attorney fees, allocable by the court for that recovery.

(d) If a judgment or verdict separately indicates economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion to

the amounts indicated. In an action in a court of this State arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

(e) Any funds recovered by the Crime Victims Compensation Fund or the Blaire Thompson Fund pursuant to this section shall be paid to the general fund.

(f) The Director may pursue any claim of the Crime Victim's Compensation ~~Fund~~ Fund, the Blaire Thompson Fund, or the Commission set forth in this Article. At the request of the Director, or otherwise, the Attorney General is authorized to assert the rights of the Crime Victim's Compensation ~~Fund~~ Fund, the Blaire Thompson Fund, or Commission before any administrative or judicial tribunal for purposes of enforcing a claim or right set forth in this Article."

SECTION 7. G.S. 15B-21 reads as rewritten:

"**§ 15B-21. Annual report.**

The Commission shall, by March 15 each year, prepare and transmit to the Governor and the General Assembly a report of its activities in the prior fiscal year and the current fiscal year to date. The report shall include:

(1) The number of claims filed;
(2) The number of awards made;
(2a) The number of pending cases by year received;
(3) The amount of each award;
(4) A statistical summary of claims denied and awards made;
(5) The administrative costs of the Commission, including the compensation of commissioners;
(6) The current unencumbered balance of the North Carolina Crime Victims Compensation Fund;
(6a) The current unencumbered balance of the Blaire Thompson Fund;
(7) The amount of funds carried over from the prior fiscal year;
(8) The amount of funds received in the prior fiscal year from the Department of Correction and from the compensation fund established pursuant to the Victims Crime Act of 1984, 42 U.S.C. § 10601, et seq.; and
(9) The amount of funds expected to be received in the current fiscal year, as well as the amount actually received in the current fiscal year on the date of the report, from the Department of Correction and from the compensation fund established pursuant to the Victims Crime Act of 1984, 42 U.S.C. § 10601, et seq.

The Attorney General and State Auditor shall assist the Commission in the preparation of the report required by this section."

SECTION 8. Chapter 15B of the General Statutes is amended by adding a new section to read:

"**§ 15B-23.1. The Blaire Thompson Fund.**

There is established the Blaire Thompson Fund. Revenue in the Blair Thompson Fund includes amounts credited to the Fund under G.S. 105-113.113 and other funds.

Any surplus in the Blaire Thompson Fund shall not revert. The Blaire Thompson Fund shall be kept on deposit with the State Treasurer, as in the case of other State funds, and may be invested by the State Treasurer in any lawful security for the investment of State money. The Blaire Thompson Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes."

SECTION 9. G.S. 105-113.105 reads as rewritten:

"The purpose of this Article is to levy an excise tax to generate revenue for State and local law enforcement ~~agencies~~ agencies, crime victims, and for the General Fund. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses or distributes an illegal substance."

SECTION 10. G.S. 105-113.106 reads as rewritten:

"**§ 105-113.106. Definitions.**

The following definitions apply in this Article:

...

(8b) Transfer. – The actual or constructive change of possession from one person to another of a substance regulated by this Chapter.

..."

SECTION 11. Article 2D of Chapter 105 is amended by adding a new section to read:

"**§ 105-113.107B. Transfer tax on unauthorized substances.**

(a) Controlled Substances. – An transfer tax is levied on controlled substances that have been transferred by dealers at the following rates:

(1) At the rate of one dollar ($1.00) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(2) At the rate of ten dollars ($10.00) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this section.

(3) At the rate of one hundred twenty dollars ($120.00) for each gram, or fraction thereof, of cocaine.

(4) At the rate of two hundred fifty dollars ($250.00) for each gram, or fraction thereof, of heroin.

(5) At the rate of one hundred dollars ($100.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.

(6) At the rate of two hundred dollars ($200.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(7) At the rate of two hundred fifty dollars ($250.00) for each 10 dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

(b) Weight. – A quantity of marijuana or other controlled substance is measured by the weight of the transferred substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight. A quantity of a controlled

substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(c) Illicit Spirituous Liquor. – An transfer tax is levied on illicit spirituous liquor at the following rates:

(1) At the rate of three hundred dollars ($300.00) for each gallon, or fraction thereof, of illicit spirituous liquor sold by the drink.

(2) At the rate of five hundred dollars ($500.00) for each gallon, or fraction thereof, of illicit spirituous liquor not sold by the drink."

SECTION 12. G.S. 105-113.107A reads as rewritten:

"**§ 105-113.107A. Exemptions.**

(a) Authorized Possession. – The tax levied in this Article does not apply to a substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(a1) Authorized Transfer. – The tax levied in this Article does not apply to a transfer of a substance by a dealer who is legally authorized to transfer the substance. This exemption applies only during the time the dealer's transfer of the substance is authorized by law.

(b) Certain Marijuana Parts. – The tax levied in this Article does not apply to the following marijuana:

(1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant.

(2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks.

(3) Marijuana seeds that have been sterilized and are incapable of germination.

(4) Roots of the marijuana plant."

SECTION 13. G.S. 105-113.108 reads as rewritten:

"**§ 105-113.108. Reports; revenue stamps.**

(a) Revenue Stamps. – The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the ~~tax~~ taxes required by this Article. Dealers shall report the taxes payable under this Article at the time and on the return prescribed by the Secretary. Notwithstanding any other provision of law, dealers are not required to give their name, address, social security number, or other identifying information on the return, and the return is not required to be verified by oath or affirmation. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Reports. – Every local law enforcement agency and every State law enforcement agency must report to the Department within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's

social security number, and any other information prescribed by the Secretary. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which ~~a~~an excise or transfer stamp has not been affixed as required by this Article:

(1) More than 42.5 grams of marijuana.
(2) Seven or more grams of any other controlled substance that is sold by weight.
(3) Ten or more dosage units of any other controlled substance that is not sold by weight.
(4) Any illicit mixed beverage.
(5) Any illicit spirituous liquor.
(6) Mash."

SECTION 14. G.S. 105-113.109 reads as rewritten:

"**§ 105-113.109. When tax payable.**

(a) The excise tax imposed by this Article is payable by any dealer who actually or constructively possesses an unauthorized substance in this State upon which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance. Once the excise tax due on an unauthorized substance has been paid, no additional excise tax is due under this Article even though the unauthorized substance may be handled by other dealers.

(b) The transfer tax imposed by this Article is payable by any dealer who actually or constructively transfers an unauthorized substance in this State upon which the transfer tax has not been paid, as evidenced by an unexpired transfer stamp. The tax is payable prior to any transfer, and stamps issued upon payment of the tax shall expire five days from the date of the issuance. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance to be transferred. All transfers of unauthorized substances, including unauthorized substances which have been previously transferred with appropriate stamps, must have a valid and unexpired transfer stamp affixed."

SECTION 15. G.S. 105-113.111 reads as rewritten:

"**§ 105-113.111. Assessments.**

Notwithstanding any other provision of law, an assessment against a dealer who ~~possesses~~ possesses, or who has transferred, an unauthorized substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the excise or transfer tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice

and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set forth in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter."

SECTION 16. G.S. 105-113.113 reads as rewritten:

"**§ 105-113.113. Use of tax proceeds.**

(a) Special ~~Account.~~ Accounts. – The Secretary shall credit the proceeds of the ~~tax~~ taxes levied by this Article to two ~~a~~ special nonreverting ~~account,~~ accounts, to be called the State Unauthorized Substances Tax Account for Excise Taxes, and the State Unauthorized Substances Tax Account for Transfer Taxes, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under G.S. 105-267 to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

(b) Excise Tax Distribution. – The Secretary shall remit from the State Unauthorized Substances Tax Account for Excise Taxes, seventy-five percent (75%) of the part of the unencumbered tax proceeds that was collected by assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(b1) Transfer Tax Distribution. – The Secretary shall remit the unencumbered tax proceeds in the State Unauthorized Substances Tax Account for Transfer Taxes to the Blaire Thompson Fund, as established by G.S. 15B-23.1.

(c) Refunds. – The refund of a tax that has already been distributed shall be drawn initially from the State Unauthorized Substances Tax ~~Account.~~ for Excise Taxes or Transfer Taxes, depending upon which account had been the source of the distribution. The amount of refunded taxes that had been distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the Account to that law enforcement agency. The amount of refunded taxes that had been credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account."

SECTION 17. Sections 1 through 8, and 17, are effective when this act becomes law. The remainder of this act becomes effective December 1, 2006, and applies to transfers of illegal controlled substances on or after that date.

SENATE BILL 1211 PCS:
Blaire Thompson Drug Dealer Liability Act

BILL ANALYSIS

Committee:	Senate Judiciary I.	**Date:**	July 6, 2006
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell
Version:	PCS to First Edition S1211-CSRK-001		Committee Co-Counsel

SUMMARY: ***This act would create the Blaire Thompson Fund, which would be a source of compensation to persons who suffer damages due to the illegal distribution of controlled substances. The Fund would be administered by the Crime Victims Compensation Commission. Drug distributors would be required to pay a transfer tax to the Department of Revenue on transferred controlled substances; monies collected from the tax would be credited to the Fund. The tax provisions are effective on December 1, 2006, and would apply to transfers occurring on or after that date***

CURRENT LAW: North Carolina has an excise tax on illegal controlled substances. State law requires a person in possession of controlled substances to purchase tax stamps to affix to the illegal substance. Persons who are caught with illegal substances without the proper stamps are liable to the Department of Revenue for the taxes, penalties, and interest. A total of approximately $78 million dollars was collected by the Department of Revenue between the years 1990 and 2004.

BILL ANALYSIS:

Section 1: The name of the act is the Blaire Thompson Act. The purpose is to provide damages to persons injured by illegal substance distribution. A transfer tax is established that is payable by drug dealers.

Section 2: The Crime Victims Compensation Act is amended to provide definitions of terms applicable to claims for compensation.

Section 3: Amends the powers of the Director, and the Crime Victims Compensation Commission ("Commission"), to accept grants of money to the Blaire Thompson Fund ("Fund").

Section 4: Amends the statute providing for applications to the Commission to include the Fund.

Section 5: Requires the Director to provide procedures for applications for compensation from the Fund.

Section 6: Amends Compensation Fund statutes to include the Blaire Thompson Fund. Upon an award, the Fund is subrogated to claimant's rights to recover from other sources, and is eligible to receive restitution as authorized by law.

Section 7: Requires the Commission to submit an annual report to the Governor and the General Assembly with the unencumbered balance in the Fund.

Section 8: Establishes the Blaire Thompson Fund, and provides for crediting from the Department of Revenue's collection of illegal substance transfer taxes. The Fund is subject to oversight by the State Auditor.

Section 9: Makes a technical, conforming change.

Section 10: Defines "transfer" as used in the illegal substance tax laws.

Section 11: Amends the tax laws to create a transfer tax on controlled substances. Specific tax rates are listed.

Section 12: Exempts lawful transfers of controlled substances; exemption applies only during the time the transfer is authorized by law.

Section 13: Amends the statute providing for revenue stamps to reflect the additional transfer tax. Law enforcement agencies, upon seizure of the statutorily defined minimum amount of controlled substances, must report the absence of the proper stamps to the Department.

Section 14: Provides the guidelines for when the transfer tax is payable. The tax must be paid, and the stamps affixed, within 5 days of the transfer. The stamps expire after 5 days, and subsequent transfers must have valid stamps affixed.

Section 15: Adds the transfer tax to the penalty provisions for failure to pay the unauthorized substances tax. The section provides that notice must be given to the dealer, and also provides the procedure for collection of taxes, penalties, and interest.

Section 16: Establishes a State Unauthorized Substances Tax Account for Transfer Taxes as a non-reverting account. The section provides that the Secretary of the Department of Revenue shall credit the account with proceeds of the taxes levied under the transfer tax provisions. Upon the taxes becoming unencumbered, the proceeds in the Account must be remitted to the Blaire Thompson Fund.

Section 17: Provides the effective dates.

EFFECTIVE DATE: The provisions establishing the Fund and other changes to the Crime Victims Compensation Act are effective when the act becomes law. The provisions relating to the transfer tax become effective December 1, 2006, and apply to transfers made on or after that date.

S1211e1-SMRK-CSRK-001

North Carolina
Department of Revenue

About The Unauthorized Substances Tax

(North Carolina General Statutes 105-113.105 Through 105-113.113)

What is the unauthorized substances tax?

The unauthorized substances tax is an excise tax on controlled substances (marijuana, cocaine, etc.), illicit spirituous liquor ("moonshine"), mash and illicit mixed beverages.

Who is required to pay the tax?

The tax is due by any individual who possesses an unauthorized substance upon which the tax has not been paid, as evidenced by a stamp.

When is the tax due?

The tax is payable within 48 hours after an individual acquires possession of an unauthorized substance upon which the tax has not been paid, as evidenced by a stamp.

Do I have to identify myself when I pay the tax?

No. Individuals who purchase stamps from the Department of Revenue are not required to give their name, address, social security number, or other identifying information.

What should I do with the stamps that I receive after I pay the tax?

The stamps must be permanently affixed to the unauthorized substance. Once the tax due on an unauthorized substance has been paid and the stamps affixed, no additional tax is due even though the unauthorized substance may be handled or possessed by other individuals in the future.

Will the Department of Revenue notify law enforcement if I purchase stamps to affix to my unauthorized substances?

No. Not withstanding any other provision of law, information obtained pursuant to the unauthorized substances tax law is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of the unauthorized substances tax law. Revenue employees who divulge information regarding stamp purchasers to law enforcement shall be guilty of a Class 1 misdemeanor.

How are unauthorized substances tax collections used?

Seventy-five percent (75%) of the money collected is returned to the state or local law enforcement agency whose investigation led to the assessment. The remaining twenty-five percent (25%) of the money collected is credited to the General Fund.

If I purchase stamps will I then be in legal possession of the drugs?

No, purchasing stamps only fulfills your civil unauthorized substance tax obligation. You will still be in violation of the criminal statues of North Carolina for possessing the drugs.

What number can I call to get an application for stamps or more information on the unauthorized substances tax?

1-877-308-9103

Last modified on: ***07/26/04 04:15:10 PM.***

BD-1
Web
8-04

Unauthorized Substances Tax Return
(Controlled Substances)

BD

Name _____ Phone _____

Mailing Address _____

City _____ State _____ Zip Code _____

(Note: G.S. 105-113.108(a) of the Unauthorized Substances Act provides that an applicant is not required to give name, address, or other identifying information to obtain unauthorized substance taxpaid stamps.)

Unauthorized Substances tax return for the following taxpaid stamps:

		(A) Package Size	(B) Tax Rate	(C) Tax Per Package (A) x (B)	(D) No. of Packages To Be Stamped	(E) Tax Due (C) x (D)
Marijuana (By weight)	1.		$3.50 per gram or fraction thereof (germinating seeds and plants)	$		$
	2.					
	3.					
	4.					
	5.		40¢ per gram or fraction thereof (separated stalks and stems)	$		$
	6.					
	7.					
	8.					
Cocaine (By weight)	9.		$50 per gram or fraction thereof	$		$
	10.					
	11.					
	12.					
Unauthorized Substance (By weight)	13.		$200.00 per gram or fraction thereof	$		$
	14.					
	15.					
	16.					
Low Street Value (By dosage)	17.		$50 for each 10 dosage units or fraction thereof	$		$
	18.					
	19.					
	20.					
Unauthorized Substance (By dosage)	21.		$200.00 for each 10 dosage units or fraction thereof	$		$
	22.					
	23.					
	24.					
Total tax due per application (Lines 1 thru 24) - Pay this amount						$

Conversion Table	(For Department Use Only) Stamp Serial Numbers
1 gram = 03527 ounce 1 ounce = 28.35 grams 1 pound = 453.6 grams 1 kilograms = 1,000 grams	Marijuana (W) _____ Cocaine (W) _____ Controlled Substance (W) _____ Controlled Substance (D) _____ Low Street Value (D) _____ Release No.: _____

MAIL TO: North Carolina Department of Revenue
Unauthorized Substances Tax Division
P.O. Box 25000
Raleigh, N. C. 27640

For Questions Call: (919) 733-6459

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1211

Short Title:	Blaire Thompson Drug Dealer Liability Act.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ENACT THE BLAIRE THOMPSON DRUG DEALER LIABILITY ACT IN ORDER TO PROVIDE A CIVIL REMEDY FOR DAMAGES TO PERSONS IN A COMMUNITY INJURED BY AN INDIVIDUAL'S USE OF ILLEGAL CONTROLLED SUBSTANCES AND TO APPROPRIATE FUNDS TO HELP IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5F.

"Blaire Thompson Drug Dealer Liability Act.

"**§ 90-113.85. Title of Article.**

This Article shall be known and may be cited as the 'Blaire Thompson Drug Dealer Liability Act'.

"**§ 90-113.86. Purpose.**

The purpose of this Article is to provide a civil remedy for damages to persons in a community injured by an individual's use of illegal drugs. It establishes a cause of action against drug dealers for damages for monetary, noneconomic, and physical losses incurred as a result of an individual's use of an illegal controlled substance. This Article will shift the cost of the damage caused by the marketing of illegal drugs to those who illegally profit from that market, as well as deter others from entering the illegal drug market by subjecting them to substantial monetary loss. This Article will also provide an incentive for individual users to identify drug marketers and recover from them the costs of their own drug treatment.

"**§ 90-113.87. Definitions.**

(1) 'Illegal controlled substance' means a controlled substance as defined and covered under Article 5 of this Chapter.

(2) 'Individual user' means the individual whose use of an illegal controlled substance that is not obtained directly from, or pursuant to,

a valid prescription or order of a licensed physician or practitioner is the basis of an action brought under this Article.

(3) 'Level one offense' means the illegal possession with the intent to distribute less than four ounces or the illegal distribution of less than one ounce of an illegal controlled substance.

(4) 'Level two offense' means the illegal possession with intent to distribute four ounces or more but less than eight ounces, or the illegal distribution of one ounce or more, but less than two ounces, of an illegal controlled substance.

(5) 'Level three offense' means the illegal possession with intent to distribute eight ounces or more but less than 16 ounces, or the illegal distribution of two ounces or more, but less than four ounces, of an illegal controlled substance.

(6) 'Level four offense' means the illegal possession with intent to distribute 16 ounces or more, or the illegal distribution of four ounces or more, of an illegal controlled substance.

(7) 'Marketing of an illegal controlled substance' means the possession with intent to distribute or distribution of a specified illegal controlled substance which is a violation of Article 5 of this Chapter.

(8) 'Participate in the marketing of an illegal controlled substance' means to distribute, possess with intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. 'Participate in the marketing of an illegal controlled substance' does not include the purchase or receipt of an illegal controlled substance for personal use only.

(9) 'Period of illegal use' means, in relation to the individual user of an illegal controlled substance, the time from the individual's first illegal use of an illegal controlled substance to the accrual of the cause of action.

(10) 'Person' means a natural person, governmental entity, or corporation, partnership, firm, trust, or incorporated or unincorporated association, existing under or authorized by the laws of this State, another state, or a foreign country.

(11) 'Place of illegal activity' means, in relation to the individual user of an illegal controlled substance, each county in which the individual illegally possesses or uses an illegal controlled substance during the period of the individual's use of an illegal controlled substance.

(12) 'Place of participation' means, in relation to a defendant in an action brought under this Article, each county in which the person participates in the marketing of illegal controlled substances during the period of the person's participation in the marketing of illegal controlled substances.

(13) 'Conviction' means a conviction, guilty plea, or plea of nolo contendere and includes being convicted of a violation of a law of any other state or a city or county ordinance.

(14) 'Prior convictions' means felonies and misdemeanors, prior convictions not classified at the time of convictions, federal or out-of-state convictions, and juvenile adjudications if the offenses would be felonies if committed by an adult.

"**§ 90-113.88. Persons who may bring action; persons against whom actions may be brought; damages recoverable.**

(a) Any one or more of the following persons may bring an action for damages caused by an individual's use of an illegal controlled substance against those persons enumerated in subsection (b) of this section:

(1) A parent, legal guardian, child, spouse, or sibling of the individual user;

(2) An individual who was exposed to an illegal controlled substance in utero;

(3) An employer of the individual user;

(4) A medical facility, insurer, employer, governmental entity, or other legal entity that funds a drug treatment program or other employee assistance program for, or that otherwise expends money on, behalf of the individual user; or

(5) A person injured as a result of the willful, reckless, or negligent actions of an individual user.

(b) A person entitled to bring an action pursuant to subsection (a) of this section may seek damages from one or more of the following:

(1) A person who sold, administered, or furnished an illegal controlled substance to the individual user; or

(2) A person who knowingly participated in the marketing of an illegal controlled substance, if all of the following apply:

a. The place of illegal activity by the individual user is within the municipality, county, or unincorporated area of the county in which the defendant's place of participation is situated.

b. The defendant's participation in the marketing of illegal controlled substances was connected with the same type of illegal controlled substance used by the individual user and the defendant has been convicted of an offense for that type of specified illegal controlled substance, which the defendant committed in the same county as the individual user's place of use.

c. The defendant participated in the marketing of illegal controlled substances at anytime during the period in which the individual user used the illegal controlled substance.

(c) As used in subdivision (b)(2) of this section, 'knowingly participated in the marketing of an illegal controlled substance' means an individual was convicted of

possession with the intent to distribute or distribution of an illegal controlled substance in violation of Chapter 90 of the General Statutes.

(d) A person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the use of an illegal controlled substance;

(2) Noneconomic damages including, but not limited to, physical and emotional pain and suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by an individual's use of an illegal controlled substance;

(3) Exemplary damages;

(4) Reasonable attorneys' fees; and

(5) Costs of suit including, but not limited to, reasonable expenses for expert testimony.

"**§ 90-113.89. Actions by individual users; damages recoverable.**

(a) An individual user is entitled to bring an action for damages caused by the use of an illegal controlled substance only if all of the following conditions are met:

(1) Not less than six months before filing the action, the individual personally discloses to a law enforcement agency all of the information known to the individual regarding the individual's sources of illegal controlled substances.

(2) The individual has not used an illegal controlled substance within 30 days before filing the action.

(3) The individual does not use an illegal controlled substance while the action is pending.

(b) The individual user entitled to bring an action under this section may recover only the following damages:

(1) Economic damages including, but not limited to, the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's use of an illegal controlled substance;

(2) Reasonable attorneys' fees; and

(3) Costs of suit including, but not limited to, reasonable expenses for expert testimony.

(c) The individual user entitled to bring an action under this section may seek damages only from a person who distributed, or possessed with the intent to distribute, the illegal controlled substance actually used by the individual user.

"**§ 90-113.90. Assignment of cause of action.**

A cause of action authorized by this Article shall not be assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

"**§ 90-113.91. Responsibility for damages; level of offense.**

Any person whose participation in the marketing of illegal controlled substances constitutes any of the following levels of offense shall be subject to a rebuttable presumption of responsibility in the following amounts:

(1) For a level one offense, twenty-five percent (25%) of the damages;

(2) For a level two offense, fifty percent (50%) of the damages;

(3) For a level three offense, seventy-five percent (75%) of the damages; or

(4) For a level four offense, one hundred percent (100%) of the damages.

"**§ 90-113.92. Multiple parties to action; relief according to respective liabilities.**

(a) Two or more persons may join in one action under this Article as plaintiffs if their respective actions have at least one market for illegal controlled substances in common and if any portion of the period of use of an illegal controlled substance is concurrent with the period of use of an illegal controlled substance for every other plaintiff.

(b) Two or more persons may be joined in one action under this Article as defendants if those persons are liable to at least one plaintiff.

(c) A plaintiff need not participate in obtaining, and a defendant need not participate in defending, against all of the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

"**§ 90-113.93. Standard of proof; effect of conviction for distribution of controlled substance.**

(a) Proof of liability in an action brought under this Article shall be by a preponderance of the evidence.

(b) A person against whom recovery is sought who has been convicted of the distribution of an illegal controlled substance under Chapter 90 of the General Statutes or under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801, et seq., is precluded from denying participation in the marketing of an illegal controlled substance.

"**§ 90-113.94. Defense; liability of law enforcement officer or agency.**

(a) It is a defense to any action brought under this Article that the person who possessed with the intent to distribute or distributed an illegal controlled substance did so under the authority of law as a licensed physician or practitioner, as an ultimate user of the illegal controlled substance pursuant to a lawful prescription, or as a person otherwise authorized by law.

(b) A law enforcement officer or agency, the State, or any person acting at the direction of a law enforcement officer or agency of the State is not liable for participating in the marketing of an illegal controlled substance if the participation is in furtherance of an illegal investigation.

"**§ 90-113.95. Seizure of property; injunctions.**

A person authorized to file an action under this Article may seek a seizure or injunction or other remedial action against all assets of a defendant sufficient to satisfy a potential award, except an asset named in or seized pursuant to a forfeiture action by the State or federal agency before a plaintiff commences an action pursuant to this Article, unless the asset is released by the agency that seized it.

"**§ 90-113.96. Statute of limitations.**

(a) Except as otherwise provided in this section, a cause of action under this Article shall not be brought more than two years after the cause of action accrues. A cause of action accrues under this Article when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm.

(b) For a plaintiff, the statute of limitation under this section is tolled while the individual potential plaintiff is incapacitated by the use of an illegal controlled substance to the extent that the individual cannot reasonably be expected to seek recovery under this Article or as otherwise provided by law. For a defendant, the statute of limitation under this section is tolled until six months after the individual potential defendant is convicted under Chapter 90 of the General Statutes or as otherwise provided by law.

"**§ 90-113.97. Continuance pending completion of criminal investigation.**

On motion by a governmental entity involved in an investigation or prosecution involving an illegal controlled substance, an action brought under this Article shall be continued until the completion of the criminal investigation or prosecution that gave rise to the motion for a continuance of the action."

SECTION 2. The Administrative Office of the Courts shall develop forms needed to a file a cause of action under this Article and provide training to judicial personnel.

SECTION 3. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of fifty thousand dollars ($50,000) to be used to develop forms, to train judicial personnel, and to otherwise implement this Article.

SECTION 4. This act becomes effective December 1, 2006.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7/7/06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Mark C. Trawick	Donald Beaver Intern
Karen Lemmon	Smith Anderson
Fred Bone	Bone & Asso.
Roger Bone	"
John Bowdish	Astra Zeneca
Barbara Conaway	BBOR
[signature]	AOC
Ben Carroll	NC Green Party
Barbara Howe	Libertarian Party of NC
[illegible]	R. Clark & Assoc.
Chris Heagarty	NC Ctr. for Voter Education.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Ed King	NC Open Elections Coalition
Wm W. Murphy	COMMON CAUSE OF NC
Ryan Presley	Rep Hagan
Todd Barlow	NCATL
Eric Sauls	Edmisten + Webb
Kevin Leonard	JCSE
Rob Schofield	NC Ctr for NP's
Leslie Bevacqua Cinn	Capstrat
Jim Blackburn	NC Association of County Commissioners
Anthony Allen	NAACP
[illegible]	JA, AL, PA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
CP Medlin	NCATL
Jack Zylman	NCAE
Chad Hinton	Civitas Institute
[illegible]	RANC
[illegible]	NCNS
Perri Morgan	NC100

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Monday	July 10, 2006	4:30 PM	1027 LB

PLEASE NOTE TIME CHANGE

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1024	Instant Runoff Voting.	Representative Luebke
HB 1845	Permitted Use of Campaign Funds.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 1848	No Blank Contribution Checks.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 1965	Eminent Domain Restrictions.	Representative Goforth Representative Sherrill

Senator Daniel G. Clodfelter, Chair

2006

SENATE
JUDICIARY I

COMMITTEE
MINUTES

Judiciary 1 Committee

July 10, 2006 p.m

Minutes

Senator Dan Clodfelter called the meeting to order at 4:46 p.m. with sixteen members present. He stated that HB-1965 would not be heard.

HB-1848 (No Blank Contribution Checks) Committee Substitute was introduced by Senator Clodfelter. Senator Phillip Berger moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Senator Clodfelter discussed the bill briefly. Mr. Greg Stall spoke on the bill, explaining the bill would make various changes to the laws concerning the administration of the courts system including authorization to collect fines by credit card, authorize electronic filings in court, permit criminal background checks of Judicial Department employees, establish permanency mediation, amend the foreign language interpreters program, modify the minimum number of magistrates allocated, and to make other changes as recommended by the Administrative Office of the Courts. (See attached Bill Summary for further information). Senator's Phillip Berger, Tony Rand and Pete Brunstetter had questions. Senator Clodfelter and Mr. Stall answered the questions. Senator Clodfelter stated the bill would be displaced at this time, and would be heard again at the next J-1 meeting.

HB-1845 (Permitted Use of Campaign Funds was introduced by Senator Clodfelter. Representative Deborah Ross explained that the bill establishes uses of contributions to candidates and campaign funds. It also amends the campaign finance reporting statutes to require additional detain in reporting of expenditures. Senator's Richard Stevens, Andrew Brock, David Hoyle, and Tony Rand had questions. The questions were answered by Representative Ross. Senator Tony Rand offered an Amendment to the bill on page 1, line 27, and on page 2, line 2. (See attached Amendment). All members voted yes. Amendment was adopted. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting adjourned at 5:55 p.m.

Daniel G Clodfelter

Senator Dan Clodfelter, Chair

Wanda Joyner

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, July 10, 2006

Senator CLODFELTER,
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) **1845** Permitted Use of Campaign Funds.

Draft Number:	PCS 50769
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1848

Committee Substitute Favorable 5/30/06
Third Edition Engrossed 5/31/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1848-CSRU-102 [v.2]

7/6/2006 10:05:53 PM

Short Title: Omnibus Courts Act. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COLLECTION OF OFFENDER FINES AND FEES ASSESSED BY THE GENERAL COURT OF JUSTICE BY CREDIT CARD, CHARGE CARD, OR DEBIT CARD; TO AUTHORIZE THE USE OF ELECTRONIC FILING IN THE TRIAL COURTS; TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES; TO ESTABLISH A PERMANENCY MEDIATION PROGRAM; TO AMEND THE LAW PROVIDING FOR FOREIGN LANGUAGE INTERPRETERS IN THE COURTS; TO AUTHORIZE THE ESTABLISHMENT OF CERTAIN POSITIONS WITHIN THE JUDICIAL DEPARTMENT; AND TO MAKE TECHNICAL CORRECTIONS AND ADJUSTMENTS TO PROVISIONS AFFECTING THE COURTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-321. Collection of offender fines and fees assessed by the court.**

The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines, fees, and costs owed to the courts by offenders."

SECTION 1.(b) G.S. 7A-343 reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and his duties include the following:

...

(9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service;

..."

SECTION 2.(a) G.S. 1A-1, Rule 5(e), reads as rewritten:

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

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

SECTION 2.(b) G.S. 7A-343(9a) reads as rewritten:

"(9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction processing and access to court information systems pursuant to G.S. 7A-343.2; and".

SECTION 2.(c) Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-49.5. Statewide electronic filing in courts.**

(a) The General Assembly finds that the electronic filing of pleadings and other documents required to be filed with the courts may be a more economical, efficient, and satisfactory procedure to handle the volumes of paperwork routinely filed with, handled by, and disseminated by the courts of this State, and therefore authorizes the use of electronic filing in the courts of this State.

(b) The Supreme Court may adopt rules governing this process and associated costs and may supervise its implementation and operation through the Administrative Office of the Courts. The rules adopted under this section shall address the waiver of electronic fees for indigents.

(c) The Administrative Office of the Courts may contract with a vendor to provide electronic filing in the courts, provided that the costs for the hardware and software are not paid using State funds.

(d) Any funds received by the Administrative Office of the Courts from the vendor selected pursuant to subsection (c) of this section, other than applicable statutory court costs, as a result of electronic filing, shall be deposited in the Court Information Technology Fund in accordance with G.S. 7A-343.2."

SECTION 2.(d) G.S. 7A-343.2 reads as rewritten:

"§ 7A-343.2. **Court Information Technology Fund.**

The Court Information Technology Fund is established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Director pursuant to G.S. 7A-109(d) and G.S. 7A-49.5 shall be remitted to the State Treasurer and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Judicial Department for court information technology and office automation needs. The Director shall report by August 1 and February 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on all moneys collected and deposited in the Fund and on the proposed expenditure of those funds collected during the preceding six months."

SECTION 3.(a) Part 2 of Article 4 of Chapter 114 is amended by adding a new section to read:

"**§ 114-19.16. Criminal record checks for the Judicial Department.**

(a) The Department of Justice may provide to the Judicial Department from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Judicial Department. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the current or prospective employee, volunteer, or contractor shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3.(b) Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-349. Criminal history record check; denial of employment, contract, or volunteer opportunity.**

The Judicial Department may deny employment, a contract, or a volunteer opportunity to any person who refuses to consent to a criminal history check authorized under G.S. 114-19.16, and may dismiss a current employee, terminate a contractor, or terminate a volunteer relationship if that employee, contractor, or volunteer refuses to consent to a criminal history record check authorized under G.S. 114-19.16."

SECTION 4.(a) Article 2 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-202. Permanency Mediation.**

(a) The Administrative Office of the Courts shall establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in cases under this Subchapter in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child; provided, the court may allow mediation to proceed without the participation of a parent whose identity is unknown, a party who was served and has not made an appearance, or a parent, guardian, or custodian who has not been served despite a diligent attempt to serve the person. Upon a finding of good cause, the court may allow mediation to proceed without the participation of a parent who is unable to participate due to incarceration, illness, or some other cause. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

(b) The Administrative Office of the Courts shall establish in phases a statewide Permanency Mediation Program consisting of local district programs to be established in all judicial districts of the State. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district, such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate policies and regulations necessary and appropriate for the administration of the program. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) Mediation proceedings shall be held in private and shall be confidential. Except as provided otherwise in this section, all verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

(d) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(e) Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, the court shall incorporate the agreement in a court order, and the agreement shall become enforceable as a court

order. If some or all of the issues referred to mediation are not resolved by mediation, the mediator shall report that fact to the court."

SECTION 4.(b) The Administrative Office of the Courts may use funds available during the 2006-2007 fiscal year to implement the provisions of this section.

SECTION 5.(a) G.S. 7A-314(f) reads as rewritten:

"(f) In ~~a criminal case when a person who~~ any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English ~~language is an indigent defendant, a witness for an indigent defendant, or a witness for the State~~ language, and the court appoints a foreign language interpreter to assist that ~~defendant or witness in the case,~~ party or witness, the reasonable fee for the interpreter's services, ~~as set by the court, are~~ is payable from funds appropriated to the Administrative Office of the Courts. The appointment and payment shall be made in accordance with G.S. 7A-343(9b)."

SECTION 5.(b) G.S. 7A-343 is amended by adding a new subdivision to read:

"(9b) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so."

SECTION 6. G.S. 7A-39 reads as rewritten:

"**§ 7A-39. ~~Adverse weather cancellation~~ Cancellation of court sessions and closing court offices; extension of statutes of limitations in catastrophic conditions.**

(a) Cancellation of Court Sessions, Closing Court Offices. – In response to adverse weather or other ~~comparable~~ emergency situations, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform statewide guidelines prescribed by the Director of the Administrative Office of the Courts.

(b) Authority of Chief ~~Justice to Extend Statutes of Limitations.~~ Justice. – When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to this subsection extend, to a date certain no fewer than 10 days after the effective date of the order, the time within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order.

(1) Catastrophic conditions defined. – As used in this subsection, "catastrophic conditions" means any set of circumstances that make it impossible or extremely hazardous for judicial officials, employees,

parties, witnesses, or other persons with business before the courts to reach a courthouse, or that create a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid travelling to or being in the ~~courthouse, including conditions that may result from hurricane, tornado, flood, snowstorm, ice storm, other severe natural disaster, fire, or riot.~~ courthouse.

(2) Entry of order. – The Chief Justice may enter an order under this subsection at any time after catastrophic conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon ~~being filed in the office of the clerk of superior court of that county.~~ the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the Chief Justice.

(c) In Chambers Jurisdiction Not Affected. – Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised."

SECTION 7.(a) If Senate Bill 1741, 2005 Regular Session, becomes law, then G.S. 7A-133(c), as amended by Section 14.5 of that act, reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min	Additional Seats of Court
Camden	~~1~~ 3	
Chowan	~~2~~ 3	
Currituck	~~1~~ 4	
Dare	~~3~~ 6	
Gates	2	
Pasquotank	~~3~~ 5	
Perquimans	~~2~~ 3	
Martin	4	
Beaufort	4 5.05	
Tyrrell	~~1~~ 3	
Hyde	~~2~~ 3.5	
Washington	~~3~~ 4	
Pitt	~~10~~ 10.5	Farmville Ayden
Craven	~~7~~ 10	Havelock
Pamlico	~~2~~ 3	
Carteret	~~6~~ 9	
Sampson	~~6~~ 7	

Duplin	~~8~~ 8	
Jones	2	
Onslow	~~8~~ 11	
New Hanover	~~6~~ 11	
Pender	4 4.8	
Halifax	~~9~~ 12	Roanoke Rapids, Scotland Neck
Northampton	~~5~~ 5.25	
Bertie	4 5	
Hertford	~~5~~ 6	
Nash	~~7~~ 9	Rocky Mount
Edgecombe	4 7	Rocky Mount
Wilson	4 7	
Wayne	~~5~~ 9	Mount Olive
Greene	~~3~~ 4	
Lenoir	4 7	La Grange
Granville	~~3~~ 7	
Vance	~~3~~ 6	
Warren	~~3~~ 3.5	
Franklin	~~3~~ 7	
Person	~~3~~ 4	
Caswell	~~2~~ 4	
Wake	~~12~~ 18.5	Apex, Wendell, Fuquay-Varina, Wake Forest
Harnett	~~7~~ 10	Dunn
Johnston	~~10~~ 11	Benson, Clayton, Selma
Lee	4 5.5	
Cumberland	~~10~~ 19	
Bladen	4 5	
Brunswick	4 9	
Columbus	~~6~~ 9.5	Tabor City
Durham	~~8~~ 13	
Alamance	~~8~~ 12	Burlington
Orange	4 9	Chapel Hill
Chatham	~~3~~ 6	Siler City
Scotland	~~3~~ 5	
Hoke	4 5	
Robeson	~~9~~ 15	Fairmont,

			Maxton,
			Pembroke,
			Red Springs,
			Rowland,
			St. Pauls
	Rockingham	~~4~~ 9	Reidsville,
			Eden,
			Madison
	Stokes	~~2~~ 5	
	Surry	~~5~~ 9	Mt. Airy
	Guilford	~~20~~ 24.4	High Point
	Cabarrus	~~5~~ 9	Kannapolis
	Montgomery	~~3~~ 5	
	Randolph	~~5~~ 10	Liberty
	Rowan	~~5~~ 9	
	Stanly	~~5~~ 6	
	Union	~~4~~ 7	
	Anson	~~4~~ 5	
	Richmond	~~5~~ 6	Hamlet
	Moore	~~5~~ 6.5	Southern
			Pines
	Forsyth	~~3~~ 15	Kernersville
	Alexander	~~2~~ 4	
	Davidson	~~7~~ 10	Thomasville
	Davie	~~2~~ 4	
	Iredell	~~4~~ 9	Mooresville
	Alleghany	~~1~~ 2	
	Ashe	~~3~~ 4	
	Wilkes	~~4~~ 6	
	Yadkin	~~3~~ 4	
	Avery	~~3~~ 4	
	Madison	4	
	Mitchell	~~3~~ 4	
	Watauga	~~4~~ 5	
	Yancey	~~2~~ 3	
	Burke	~~4~~ 6.75	
	Caldwell	~~4~~ 7	
	Catawba	~~6~~ 10	Hickory
	Mecklenburg	~~15~~ 26.50	
	Gaston	~~12~~ 17	
	Cleveland	~~5~~ 8	
	Lincoln	~~4~~ 6	
	Buncombe	~~6~~ 15	
	Henderson	~~4~~ 6.5	

McDowell	~~3~~ 4.5	
Polk	~~3~~ 4	
Rutherford	~~6~~ 7	
Transylvania	~~2~~ 4	
Cherokee	~~3~~ 4	
Clay	~~1~~ 2	
Graham	2	
Haywood	~~5~~ 6.75	Canton
Jackson	~~3~~ 5	
Macon	~~3~~ 3.5	
Swain	~~2.~~ 3.75."	

SECTION 7.(b) G.S. 7A-132 reads as rewritten:

"**§ 7A-132. Judges, district attorneys, full-time assistant district attorneys and magistrates for district court districts.**

Each district court district shall have one or more judges and one district attorney. Each county within each district shall have at least one magistrate.

For each district the General Assembly shall prescribe the numbers of district judges, and the numbers of full-time assistant district attorneys. For each county within each district the General Assembly shall prescribe a minimum ~~and a maximum~~ number of magistrates."

SECTION 7.(c) 7Aa-171(a) reads as rewritten:

"**§ 7A-171. Numbers; appointment and terms; vacancies.**

(a) The General Assembly shall establish a minimum ~~and a maximum~~ quota of magistrates for each county. In no county shall the minimum quota be less than one. The number of magistrates in a county, ~~within~~ above the minimum quota set by the General Assembly, is determined by the Administrative Office of the Courts after consultation with the chief district court judge for the district in which the county is located."

SECTION 8. Section 4 of S.L. 2006-32 reads as rewritten:

"**SECTION 4.** The ~~Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee and the~~ Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

(1) Funding mechanisms;
(2) Target populations;
(3) Interagency collaboration at the State and local levels; and
(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The ~~Commissions~~ Commission may report ~~their~~ its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly.

SECTION 9. The Administrative Office of the Courts may establish up to 60 positions with funds appropriated for Technology Initiatives in the 2006-2007 fiscal year.

SECTION 10. The Administrative Office of the Courts may establish 14 positions from receipts during the 2006-2007 fiscal year.

SECTION 11. In view of the increase in fuel prices and the limits on travel funds in the Judicial Department, the Administrative Office of the Courts may use up to five hundred thousand dollars ($500,000) in funds available during the 2006-2007 fiscal year to allow for an increase in the mileage reimbursement rate paid to Judicial Department employees from the current rate of thirty-seven cents (37¢) per mile to the maximum allowable under G.S. 138-6(a)(1).

SECTION 12. If Senate Bill 1741, 2005 Regular Session, becomes law, then Section 14.17 of that act is amended by adding a new subsection to read:

"**SECTION 14.17.(b)** This section applies to persons summoned to serve as jurors on or after August 7, 2006."

SECTION 13. The Administrative Office of Courts, in conjunction with the North Carolina Equal Access to Justice Commission, North Carolina Bar Association, North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., North Carolina Justice Center, and Pisgah Legal Services, Inc., shall study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation, and report the results of the study to the Joint Appropriations Subcommittee on Justice and Public Safety no later than December 31, 2007.

SECTION 14. Section 2 of this act is effective when it becomes law and applies to all matters filed with the courts on or after the date that the Supreme Court adopts rules for electronic filing as authorized by that section. Section 3 of this act becomes effective October 1, 2006. Sections 4, 7, 9, 10, 11, and 12 of this act become effective July 1, 2006. The remainder of this act is effective when it becomes law.

HOUSE BILL 1848:
Omnibus Courts Act

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 7, 2006
Introduced by:	Rep. Hackney	**Summary by:**	O. Walker Reagan
Version:	PCS to Third Edition H1848-CSRU-102		Committee Co-Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1848 would make various changes to the laws concerning the administration of the courts system including authorization to collect fines by credit card, authorize electronic filings in court, permit criminal background checks of Judicial Department employees, establish permanency mediation, amend the foreign language interpreters program, modify the minimum number of magistrates allocated, and to make other changes as recommended by the Administrative Office of the Courts..***

BACKGROUND: Many of these provisions, as indicated below, were contained in the Senate version of the 2006-2007 budget, SB 1741, but were removed from the Budget Bill in the House, to be considered in a separate bill. **(All references to SB 1741 are to the 3rd edition as passed by the Senate).**

BILL ANALYSIS: **Section 1** of House Bill 1146 would permit the Judicial Department to accept the payments of fines, fees and costs by credit, charge or debit card through a private third-party vendor so as to allow the State to collect funds without discount or a transaction fee, which the vendor would be allowed to collect from the person seeking to make payment by this method. **(Sec. 14.7, SB 1741).**

Section 2 would permit the filing of pleadings and papers in the courts by electronic means pursuant to uniform rules adopted by the Supreme Court. AOC would be permitted to contract with a vendor to provide electronic filing services. Any funds received from the vendor would be deposited to the Court Information Technology Fund.

Section 3 permits the Judicial Department to require its employees, contractors and volunteers to consent criminal history background checks as a condition of their relationship with the Judicial Department. This section authorizes the SBI to conduct State and federal fingerprint-based criminal history background checks for the Judicial Department.

Section 4 directs the AOC to establish a Permanency Mediation Program to mediate issues arising from a juvenile who is alleged or adjudicated to be abused, neglected, dependent or where a petition for termination of parental rights has been filed. Mediations will be confidential and communications in mediation may not be testified to in court. The court may consider incorporating any mediate agreement into a court order. AOC is to use existing funds to implement this program. **(Sec. 14.10, SB 1741).**

Section 5 clarifies AOC's authority to provide foreign language interpreters for indigent defendants and authorizes the AOC to hire permanent staff to serve this purpose when it is more cost-effective to do so. **(Sec. 14.11, SB 1741).**

Section 6 clarifies the authority of the Chief Justice to cancel court sessions and close court offices in the event of adverse weather or other emergency situations.

Section 7 sets the minimum number of magistrates for each county at the current allotment. The minimum/maximum number of magistrates was eliminated in SB 1741. This section also makes conforming changes to delete references to maximum numbers of magistrates from various statutes.

Section 8 eliminates the requirement that the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee study drug treatment courts in North Carolina as enacted earlier this session.

Section 9 authorizes AOC to establish up to 60 positions with funds appropriated to the Technology Initiatives program in the 2006-07 fiscal year.

Section 10 authorizes the AOC to establish 14 positions from receipts during the 2006-07 fiscal year.

Section 11 authorizes AOC to use up to $500,000 in available funds in the 2006-07 fiscal year to allow an increase in mileage reimbursement to Judicial Department employees from 37¢ to the maximum rate allowed under G.S. 138-69(a)(1), which is the business standard mileage rate set by the Internal Revenue Service per mile of travel.

Section 12 amends the Budget Bill by making the increase in juror's fees from simply $12 per day to $20 per day for the 2nd through 5th day, and $40 per day after five days, effective for jurors serving on or after August 7, 2006. In the Budget Bill, SB 1741, this provision was effective July 1, 2006 but the budget authorizing these fee increases will not be certified until sometime after jurors have already been paid in July at the old rate.

Section 13 directs the Administrative Office of the Courts, in conjunction with the North Carolina Equal Access to Justice Commission, North Carolina Bar Association, North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., North Carolina Justice Center, and Pisgah Legal Services, Inc., to study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation, and to report the results of the study to the Joint Appropriations Subcommittee on Justice and Public Safety no later than December 31, 2007.

EFFECTIVE DATE: Section 2 of the bill is effective when it becomes law and applies to all matters filed with the courts on or after the date that the Supreme Court adopts rules for electronic filing as authorized by that section. Section 3 of this act becomes effective October 1, 2006. Sections 4, 7, 9, 10, 11, and 12 of this act become effective July 1, 2006. The remainder of this act is effective when it becomes law.

Trial

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1845

Committee Substitute Favorable 6/20/06

Third Edition Engrossed 6/22/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1845-PCS50769-RR-77

Short Title: Permitted Use of Campaign Funds. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributions for certain purposes.**

(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(b) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3).

(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. A candidate or the candidate who directs the candidate campaign committee may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section they shall be paid in the event of the death or incapacity of the candidate. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and ~~separately.~~ separately with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and ~~separately,~~ separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that ~~he~~ the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the

purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1845

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

H1845-ARR-147 [v.10]

Date 7-10 ,2006

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

Senator RAND

moves to amend the bill on page 1, line 27,
by inserting after that line the following:
"(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes."; and
On page 2, line 2,
by deleting the quotation mark and by inserting after that line the following:
"(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. A candidate or the candidate who directs the candidate campaign committee may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section they shall be paid in the event of the death or incapacity of the candidate. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section. ""; and
on page 1, line 12,
by deleting the term "candidate's" and substituting the term "candidate".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL h1845:

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 10, 2006
Introduced by:	Reps. Hackney, Howard, Eddins, Ross	**Summary by:**	William R. Gilkeson
Version:	Third Edition		Committee Co-Counsel

SUMMARY: The Third Edition of House Bill 1845 establishes exclusive permitted uses of contributions to candidates and campaign funds. It also amends the campaign finance reporting statutes to require additional detail in reporting of expenditures. Limitation on uses effective October 1, 2006, with reporting duties effective January 1, 2007.

CURRENT LAW: Generally, North Carolina is one of 10 states that do not restrict how a candidate or campaign committee may spend the funds in their accounts. Converting those funds to personal use is not specifically prohibited. Such personal use may trigger tax liability for the candidate, but does not violate the campaign finance laws as long as the personal use is publicly reported.

Exceptions to this rule are candidates and political parties whose campaigns receive public funding. Candidates for appellate judge who receive payments from the North Carolina Public Campaign Fund must limit their use of those funds to "campaign-related purposes only." *GS 163-278.64.* The State Board of Elections is required to publish guidelines for what that term means, and has done so. Also, parties that receive money from the North Carolina Political Parties Financing Fund must use that money "only for legitimate campaign expenses," examples of which are listed in the statute. *GS 163-278.42.*

BILL ANALYSIS:

Sections 1 and 5. The bill would add a new statute to Article 22A of Chapter 163 setting forth permitted and prohibited uses of contributions accepted by a candidate or candidate's committee.

A candidate or candidate's campaign committee could use contributions only for the following purposes:

- Expenditures resulting from the campaign for public office
- Expenditures resulting from holding public office.
- Contributions to a charitable organization provided that the candidate or the candidate's spouse, children, parents, brothers or sisters are not employed by the organization or on any board governing the organization.
- Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- Contributions to another candidate or candidate's campaign committee.
- To return all or a portion of a contribution to the contributor.

- Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.

A candidate or candidate's campaign committee would be prohibited from using contributions to fulfill any commitment, obligation, or expense of a candidate, individual, or other entity that would exist regardless of the campaign for public office or holding public office when making expenditures resulting from running for office or holding public office.

The criminal penalty for violation of these provisions would be a Class 2 misdemeanor.

Effective October 1, 2006, and applies to all candidates and candidate campaign committees with active accounts on that date.

Sections 2-4. The bill would amend the existing reporting requirements to require political committee and referendum committee treasurers to report expenditures with a specific description to provide a reasonable understanding of the expenditure. The bill would further require that the treasurer report the ultimate payee of the expenditure, meaning the individual or person to whom the political committee is obligated to make the expenditure. If the obligation is for more than 1 good or service, an itemization of the goods and services must be included.

Effective January 1, 2007, and applies to all political committee and referendum committees with active accounts on that date.

BACKGROUND: The bill is a recommendation of the House Select Committee on Ethics and Governmental Reform, which was charged with the task to "Explore current campaign finance and election laws and recommend changes that will foster clarity and transparency, including imposing restrictions on how a candidate can spend leftover funds from a political campaign ..."

Erika Churchill substantially contributed to this summary.

h1845e3-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1845

Committee Substitute Favorable 6/20/06
Third Edition Engrossed 6/22/06

Short Title: Permitted Use of Campaign Funds. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16B. Use of contributions for certain purposes.**

(a) A candidate or candidate's campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(b) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3)."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and ~~separately.~~ separately with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and ~~separately,~~ separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that ~~he~~ the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-10-06 - AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
FRANK W. FOLGER	HELMS MULLISS WICKER
Joyce Peters	JP Assoc
Doug Heron	NC Bar Association
John McMillan	NFIB
Perri Morgan	NCSO
[illegible]	NCLM
Tony Adams	NCAA
Len Hong	KCLH
Andrew Meehan	NLAEC
Patrick Boffkin	ALLEY Assoc INC
Michael Meyer	NCAE

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

7-10-06
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	CFPA
Susan Valauri	NW
[illegible]	[illegible]
Kathleen Edwards	UNC-CH Daily Bulletin
Stacy Flannery	NCHCFA
Barbara Canales	ARCOR
BB Hall	[illegible] NC
Hart Matthews	NC Green Party NC Open Elections Coalition
Phil Jacobson	Libertarian Party of NC
Anita Watts	NCLM
Katherine Joyce	NCASA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-10-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NCCNP
Joe Smith	NC CDL
[illegible]	NCATL
Daren Bakst	John Locke Fdn.
Michael Moore	JLF "
Bruce Thompson	Parker Poe
Tracy Kimbrell	Parker Poe
Jami Fitzgerald	NCFPC
Karen Johnson	Smith Anderson
Stephanie Simpson	NCAR
John Rustin	NCFPC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-10-85

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders Assn.
R. Paul Wilms	NCHBA
Connie Pope	Williams & Webb
Guy Rowland	Albritton & Co.

Principal Clerk ____
Reading Clerk ____

Corrected: AMENDED NOTICE - BILLS REMOVED, BILLS ADDED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 11, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1848	No Blank Contribution Checks.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 1024	Instant Runoff Voting.	Representative Luebke
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1844	Executive Branch Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke

Senator Daniel G. Clodfelter, Chair

Judiciary 1 Committee

July 11, 2006 a.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:08 a.m. with fifteen members present. He introduced Pages Andrew Brown, Corrine Mellin, Jim Gulledge, and Bridget Vandyke, all from Raleigh, NC and Kenley Lesak from Concord, NC.

HB-1848 (No Blank Contribution Checks) Committee Substitute was introduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Hal Pell explained Section 6, and stated that Sections 11 and 12 were new Sections. He explained that the bill would make various changes to the laws concerning the administration of the courts system including authorization to collect fines by credit card, authorize electronic filings I court, permit criminal background checks of Judicial Department employees, establish permanency mediation, amend the foreign language interpreters program, modify the minimum number of magistrates allocated, and to make other changes as recommended by the Administrative Office of the Courts. Senator David Hoyle offered Amendment #1to the bill on page 9, lines 32 through 34. (See attached Amendment), and Senator Tony Rand offered and Amendment #1 & #2, on page 9, line31, page 10, lines 1 through 11, and page 10, line 27. (See attached Amendment). All members voted yes. Motions carried. Senator Phillip Berger moved for Favorable Report. All members voted yes. Motion carried. Senator Clodfelter said the bill would be referred to the House Joint Legislative Study Commission of Gov. Ops.

HB-1024 (Instant Runoff Voting) Committee Substitute was introduced by Senator Clodfelter. Senator David Hoyle moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Bill Gilkeson explained that the bill would make a number of election law changes, most of them related to runoff primaries and elections or to the judicial Public Campaign Fund. (See attached Bill Summary for further information). Senator's Andrew Brock, Richard Stevens, Jerry Tillman, Jeanne Lucas, R.C. Soles, and Phillip Berger had questions. Bill sponsor, Representative Paul Luebke spoke on the bill and answered questions. Mr. Gary Bartlett, Executive Director of NC Board of Elections spoke on the bill and answered questions. Senator Hoyle moved for a Favorable Report. All members voted yes. Motion carried.

HB-1843 (Revise Legislative Ethics Act-1) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Walker Reagan explained that Part III of the proposed committee substitute amends North Carolina's lobbying laws. (See attached Bill Summary for further information) Senator's Tony Rand, Jeanne Lucas, Jerry Tillman, and Phillip Berger had questions. Senator Clodfelter spoke on the bill and answered questions. He appointed Senator's Tony Rand, Richard Stevens, Martin Nesbitt and Pete Brunstetter as a study group, and said the bill would be displaced at this time. He announced that J-1 Committee would meet again after session.

Being no further business the meeting adjourned at 11:00 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Monday, July 10, 2006

Senator CLODFELTER,
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) **1848** No Blank Contribution Checks.

Draft Number:	PCS 10644
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 11, 2006

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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) **1024** Instant Runoff Voting.

Draft Number:	PCS 50770
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Recommended Referral:	None
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GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1848

Committee Substitute Favorable 5/30/06
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PROPOSED SENATE COMMITTEE SUBSTITUTE H1848-PCS10644-RK-69

Short Title: Omnibus Courts Act. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COLLECTION OF OFFENDER FINES AND FEES ASSESSED BY THE GENERAL COURT OF JUSTICE BY CREDIT CARD, CHARGE CARD, OR DEBIT CARD; TO AUTHORIZE THE USE OF ELECTRONIC FILING IN THE TRIAL COURTS; TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES; TO ESTABLISH A PERMANENCY MEDIATION PROGRAM; TO AMEND THE LAW PROVIDING FOR FOREIGN LANGUAGE INTERPRETERS IN THE COURTS; TO AUTHORIZE THE ESTABLISHMENT OF CERTAIN POSITIONS WITHIN THE JUDICIAL DEPARTMENT; TO REVISE AND UPDATE THE PROCEDURES AND RESPONSIBILITIES OF THE JUDICIAL STANDARDS COMMISSION AND TO AUTHORIZE SIX ADDITIONAL MEMBERS OF THE COMMISSION; AND TO MAKE TECHNICAL CORRECTIONS AND ADJUSTMENTS TO PROVISIONS AFFECTING THE COURTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-321. Collection of offender fines and fees assessed by the court.**

The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines, fees, and costs owed to the courts by offenders."

SECTION 1.(b) G.S. 7A-343 reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and his duties include the following:

...

(9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service;

..."

SECTION 2.(a) G.S. 1A-1, Rule 5(e), reads as rewritten:

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

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

SECTION 2.(b) G.S. 7A-343(9a) reads as rewritten:

"(9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction processing and access to court information systems pursuant to G.S. 7A-343.2; and".

SECTION 2.(c) Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-49.5. Statewide electronic filing in courts.**

(a) The General Assembly finds that the electronic filing of pleadings and other documents required to be filed with the courts may be a more economical, efficient, and satisfactory procedure to handle the volumes of paperwork routinely filed with, handled by, and disseminated by the courts of this State, and therefore authorizes the use of electronic filing in the courts of this State.

(b) The Supreme Court may adopt rules governing this process and associated costs and may supervise its implementation and operation through the Administrative Office of the Courts. The rules adopted under this section shall address the waiver of electronic fees for indigents.

(c) The Administrative Office of the Courts may contract with a vendor to provide electronic filing in the courts, provided that the costs for the hardware and software are not paid using State funds.

(d) Any funds received by the Administrative Office of the Courts from the vendor selected pursuant to subsection (c) of this section, other than applicable statutory

court costs, as a result of electronic filing, shall be deposited in the Court Information Technology Fund in accordance with G.S. 7A-343.2."

SECTION 2.(d) G.S. 7A-343.2 reads as rewritten:

"**§ 7A-343.2. Court Information Technology Fund.**

The Court Information Technology Fund is established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Director pursuant to G.S. 7A-109(d) and G.S. 7A-49.5 shall be remitted to the State Treasurer and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Judicial Department for court information technology and office automation needs. The Director shall report by August 1 and February 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on all moneys collected and deposited in the Fund and on the proposed expenditure of those funds collected during the preceding six months."

SECTION 3.(a) Part 2 of Article 4 of Chapter 114 is amended by adding a new section to read:

"**§ 114-19.16. Criminal record checks for the Judicial Department.**

(a) The Department of Justice may provide to the Judicial Department from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Judicial Department. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the current or prospective employee, volunteer, or contractor shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3.(b) Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-349. Criminal history record check; denial of employment, contract, or volunteer opportunity.**

The Judicial Department may deny employment, a contract, or a volunteer opportunity to any person who refuses to consent to a criminal history check authorized under G.S. 114-19.16 and may dismiss a current employee, terminate a contractor, or

terminate a volunteer relationship if that employee, contractor, or volunteer refuses to consent to a criminal history record check authorized under G.S. 114-19.16."

SECTION 4.(a) Article 2 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-202. Permanency mediation.**

(a) The Administrative Office of the Courts shall establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in cases under this Subchapter in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child; provided, the court may allow mediation to proceed without the participation of a parent whose identity is unknown, a party who was served and has not made an appearance, or a parent, guardian, or custodian who has not been served despite a diligent attempt to serve the person. Upon a finding of good cause, the court may allow mediation to proceed without the participation of a parent who is unable to participate due to incarceration, illness, or some other cause. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

(b) The Administrative Office of the Courts shall establish in phases a statewide Permanency Mediation Program consisting of local district programs to be established in all judicial districts of the State. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district, such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate policies and regulations necessary and appropriate for the administration of the program. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) Mediation proceedings shall be held in private and shall be confidential. Except as provided otherwise in this section, all verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

(d) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(e) Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, the court shall incorporate the

agreement in a court order, and the agreement shall become enforceable as a court order. If some or all of the issues referred to mediation are not resolved by mediation, the mediator shall report that fact to the court."

SECTION 4.(b) The Administrative Office of the Courts may use funds available during the 2006-2007 fiscal year to implement the provisions of this section.

SECTION 5.(a) G.S. 7A-314(f) reads as rewritten:

"(f) In ~~a criminal case when a person who~~any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English ~~language is an indigent defendant, a witness for an indigent defendant, or a witness for the State~~language, and the court appoints a foreign language interpreter to assist that ~~defendant or witness in the case,~~party or witness, the reasonable fee for the interpreter's ~~services, as set by the court, are~~services is payable from funds appropriated to the Administrative Office of the Courts. The appointment and payment shall be made in accordance with G.S. 7A-343(9b)."

SECTION 5.(b) G.S. 7A-343 is amended by adding a new subdivision to read:

"(9b) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so."

SECTION 6. G.S. 7A-39 reads as rewritten:

"**§ 7A-39. ~~Adverse weather cancellation~~Cancellation of court sessions and closing court offices; extension of statutes of limitations in catastrophic conditions.**

(a) Cancellation of Court Sessions, Closing Court Offices. - In response to adverse weather or other ~~comparable~~emergency situations, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform statewide guidelines prescribed by the Director of the Administrative Office of the Courts.

(b) Authority of Chief ~~Justice to Extend Statutes of Limitations.~~Justice. – When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to this subsection extend, to a date certain no fewer than 10 days after the effective date of the order, the time or period of limitation within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order.

(1) Catastrophic conditions defined. – As used in this subsection, "catastrophic conditions" means any set of circumstances that make it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that create a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid travelling to or being in the ~~courthouse, including conditions that may result from hurricane, tornado, flood, snowstorm, ice storm, other severe natural disaster, fire, or riot.~~courthouse.

(2) Entry of order. – The Chief Justice may enter an order under this subsection at any time after catastrophic conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon ~~being filed in the office of the clerk of superior court of that county.~~the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the Chief Justice.

(c) In Chambers Jurisdiction Not Affected. – Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised."

SECTION 7.(a) If Senate Bill 1741, 2005 Regular Session, becomes law, then G.S. 7A-133(c), as amended by Section 14.5 of that act, reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min	Additional Seats of Court
Camden	~~1~~ 3	
Chowan	~~2~~ 3	
Currituck	~~1~~ 4	
Dare	~~3~~ 6	
Gates	2	
Pasquotank	~~3~~ 5	
Perquimans	~~2~~ 3	
Martin	4	
Beaufort	~~4~~ 5.05	
Tyrrell	~~1~~ 3	
Hyde	~~2~~ 3.5	
Washington	~~3~~ 4	
Pitt	~~10~~ 10.5	Farmville
		Ayden
Craven	~~7~~ 10	Havelock

Pamlico	~~2~~ 3	
Carteret	~~6~~ 9	
Sampson	~~6~~ 7	
Duplin	8	
Jones	2	
Onslow	~~8~~ 11	
New Hanover	~~6~~ 11	
Pender	~~4~~ 4.8	
Halifax	~~9~~ 12	Roanoke Rapids, Scotland Neck
Northampton	~~5~~ 5.25	
Bertie	~~4~~ 5	
Hertford	~~5~~ 6	
Nash	~~7~~ 9	Rocky Mount
Edgecombe	~~4~~ 7	Rocky Mount
Wilson	~~4~~ 7	
Wayne	~~5~~ 9	Mount Olive
Greene	~~3~~ 4	
Lenoir	~~4~~ 7	La Grange
Granville	~~3~~ 7	
Vance	~~3~~ 6	
Warren	~~3~~ 3.5	
Franklin	~~3~~ 7	
Person	~~3~~ 4	
Caswell	~~2~~ 4	
Wake	~~12~~ 18.5	Apex, Wendell, Fuquay-Varina, Wake Forest
Harnett	~~7~~ 10	Dunn
Johnston	~~10~~ 11	Benson, Clayton, Selma
Lee	~~4~~ 5.5	
Cumberland	~~10~~ 19	
Bladen	~~4~~ 5	
Brunswick	~~4~~ 9	
Columbus	~~6~~ 9.5	Tabor City
Durham	~~8~~ 13	
Alamance	~~8~~ 12	Burlington
Orange	~~4~~ 9	Chapel Hill
Chatham	~~3~~ 6	Siler City

Scotland	~~3~~ 5	
Hoke	~~4~~ 5	
Robeson	~~9~~ 15	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
Rockingham	~~4~~ 9	Reidsville, Eden, Madison
Stokes	~~2~~ 5	
Surry	~~5~~ 9	Mt. Airy
Guilford	~~20~~ 24.4	High Point
Cabarrus	~~5~~ 9	Kannapolis
Montgomery	~~3~~ 5	
Randolph	~~5~~ 10	Liberty
Rowan	~~5~~ 9	
Stanly	~~5~~ 6	
Union	~~4~~ 7	
Anson	~~4~~ 5	
Richmond	~~5~~ 6	Hamlet
Moore	~~5~~ 6.5	Southern Pines
Forsyth	~~3~~ 15	Kernersville
Alexander	~~2~~ 4	
Davidson	~~7~~ 10	Thomasville
Davie	~~2~~ 4	
Iredell	~~4~~ 9	Mooresville
Alleghany	~~1~~ 2	
Ashe	~~3~~ 4	
Wilkes	~~4~~ 6	
Yadkin	~~3~~ 4	
Avery	~~3~~ 4	
Madison	4	
Mitchell	~~3~~ 4	
Watauga	~~4~~ 5	
Yancey	~~2~~ 3	
Burke	~~4~~ 6.75	
Caldwell	~~4~~ 7	
Catawba	~~6~~ 10	Hickory
Mecklenburg	~~15~~ 26.50	
Gaston	~~12~~ 17	
Cleveland	~~5~~ 8	

Lincoln	~~4~~ 6	
Buncombe	~~6~~ 15	
Henderson	~~4~~ 6.5	
McDowell	~~3~~ 4.5	
Polk	~~3~~ 4	
Rutherford	~~6~~ 7	
Transylvania	~~2~~ 4	
Cherokee	~~3~~ 4	
Clay	~~1~~ 2	
Graham	2	
Haywood	~~5~~ 6.75	Canton
Jackson	~~3~~ 5	
Macon	~~3~~ 3.5	
Swain	~~2.~~ 3.75."	

SECTION 7.(b) G.S. 7A-132 reads as rewritten:

"**§ 7A-132. Judges, district attorneys, full-time assistant district attorneys and magistrates for district court districts.**

Each district court district shall have one or more judges and one district attorney. Each county within each district shall have at least one magistrate.

For each district the General Assembly shall prescribe the numbers of district judges, and the numbers of full-time assistant district attorneys. For each county within each district the General Assembly shall prescribe a minimum ~~and a maximum~~number of magistrates."

SECTION 7.(c) G.S. 7A-171(a) reads as rewritten:

"**§ 7A-171. Numbers; appointment and terms; vacancies.**

(a) The General Assembly shall establish a minimum ~~and a maximum~~ quota of magistrates for each county. In no county shall the minimum quota be less than one. The number of magistrates in a county, ~~within~~ above the minimum quota set by the General Assembly, is determined by the Administrative Office of the Courts after consultation with the chief district court judge for the district in which the county is located."

SECTION 8. Section 4 of S.L. 2006-32 reads as rewritten:

"**SECTION 4.** The ~~Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee and the~~Legislative Research Commission and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

(1) Funding mechanisms;
(2) Target populations;
(3) Interagency collaboration at the State and local levels; and
(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The ~~Commissions~~Commission may report ~~their~~its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

SECTION 9. If Senate Bill 1741, 2005 Regular Session, becomes law, then Section 14.17 of that act is amended by adding a new subsection to read:

"**SECTION 14.17.(b)** This section applies to persons summoned to serve as jurors on or after August 7, 2006."

SECTION 10. The Administrative Office of Courts, in conjunction with the North Carolina Equal Access to Justice Commission, North Carolina Bar Association, North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., North Carolina Justice Center, and Pisgah Legal Services, Inc., shall study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation, and report the results of the study to the Joint Appropriations Subcommittee on Justice and Public Safety no later than December 31, 2007.

SECTION 11. Article 30 of Chapter 7A of the General Statutes reads as rewritten:

"Article 30.

"Judicial Standards Commission.

"**§ 7A-374.1. Purpose.**

The purpose of this Article is to provide for the investigation and resolution of inquiries concerning the qualification or conduct of any judge or justice of the General Court of Justice. The procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with this Article. Nothing in this Article shall affect the impeachment of judges under the North Carolina Constitution, Article IV, Sections 4 and 17.

"**§ 7A-374.2. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

(1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.

(2) "Commission" means the North Carolina Judicial Standards Commission.

(3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.

(4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.

(5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.

(6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.

(7) "Public reprimand" means a written action of the Commission issued upon a finding by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court. A public reprimand may require that the judge follow a corrective course of action.

(8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.

(9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court.

"**§ 7A-375. Judicial Standards Commission.**

(a) The Judicial Standards Commission shall consist ~~of:~~of the following residents of North Carolina: one Court of Appeals judge, ~~one~~two superior court ~~judge,~~judges, and ~~one~~two district court ~~judge,~~judges, each appointed by the Chief Justice of the Supreme Court; ~~two~~four members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and ~~two~~ four citizens who are not judges, active or retired, nor members of the State Bar, ~~appointed by the Governor.~~two appointed by the Governor, and two appointed by the General Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro Tempore of the Senate and one upon recommendation of the Speaker of the House of Representatives. The Court of Appeals judge shall act as chair of the Commission.

(b) The Court of Appeals judge shall serve at the pleasure of the Chief Justice. Terms of other Commission members shall be for six ~~years, except that, to achieve overlapping of terms, one of the judges, one of the practicing members of the State Bar, and one of the citizens shall be appointed initially for a term of only three years.~~ years. No member who has served a full six-year term is eligible for reappointment. If a member ceases to have the qualifications required for ~~his~~the member's appointment, ~~he~~that person ceases to be a member. Vacancies of members, other than those appointed by the General Assembly, are filled in the same manner as the original appointment, for the remainder of the term. Vacancies of members appointed by the General Assembly are filled as provided under G.S. 120-122. Members who are not judges are entitled to

per diem and all members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.

(c) If a member of the Commission who is a judge becomes disabled, or becomes a respondent before the Commission, the Chief Justice shall appoint an alternate member to serve during the period of disability or disqualification. The alternate member shall be from the same division of the General Court of Justice as the judge whose place ~~he~~ the alternate member takes. If a member of the Commission who is not a judge becomes disabled, the Governor, if he appointed the disabled member, shall appoint, or the State Bar Council, if it elected the disabled member, shall elect, an alternate member to serve during the period of disability. If a member of the Commission who is not a judge and who was appointed by the General Assembly becomes disabled, an alternate member shall be appointed to serve during the period of disability in the same manner as if there were a vacancy to be filled under G.S. 120-122. In a particular case, if a member ~~disqualifies himself,~~ becomes disqualified, or is successfully challenged for cause, ~~his~~ the member's seat for that case shall be filled by an alternate member selected as provided in this subsection.

(d) A member may serve after expiration of ~~his~~the member's term only to participate until the conclusion of a ~~formal~~ disciplinary proceeding begun before expiration of ~~his~~ the member's term. Such participation shall not prevent ~~his~~the successor from taking office, but the successor may not participate in the proceeding for which ~~his~~the predecessor's term was extended. This subsection shall apply also to any judicial member whose membership on the Commission is automatically terminated by retirement or resignation from judicial office, or expiration of the term of judicial office.

(e) Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties.

(f) The chair of the Commission may employ, if funds are appropriated for that purpose, an executive director, Commission counsel, investigator, and any support staff as may be necessary to assist the Commission in carrying out its duties. With the approval of the Chief Justice, for specific cases, the chair also may employ special counsel or call upon the Attorney General to furnish counsel. In addition, with the approval of the Chief Justice, for specific cases, the chair or executive director also may call upon the Director of the State Bureau of Investigation to furnish an investigator who shall serve under the supervision of the executive director. While performing duties for the Commission, the executive director, counsel, and investigator have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(g) The Commission may adopt, and may amend from time to time, its own rules of procedure for the performance of the duties and responsibilities prescribed by this Article, subject to the approval of the Supreme Court.

"§ 7A-376. ~~Grounds for censure or removal.~~**Grounds for discipline by Commission; censure, suspension, or removal by the Supreme Court.**

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of censure, suspension, or removal, may issue to the judge a private letter of caution or may issue to the judge a public reprimand.

(b) Upon recommendation of the Commission, the Supreme Court may ~~censure or remove~~censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform ~~his~~the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. ~~Upon recommendation of the Commission, the Supreme Court may remove any judge for mental or physical incapacity interfering with the performance of his duties, which is, or is likely to become, permanent.~~A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if ~~he~~the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge. ~~A judge removed for other than mental or physical incapacity receives no retirement compensation, and is disqualified from holding further judicial office.~~

"§ 7A-377. ~~**Procedures; employment of executive secretary, special counsel or investigator.**~~**Procedures.**

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission ~~is authorized to~~may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for ~~contempt, and to prescribe its own rules of procedure.~~contempt. No justice or judge shall be recommended for ~~censure~~ censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any ~~preliminary~~ investigation ~~which~~that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the

Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.

(a5) ~~After the preliminary~~ If, after an investigation is completed, ~~and if~~the Commission concludes that ~~formal~~ disciplinary proceedings should be instituted, the notice and ~~complaint~~statement of charges filed by the Commission, along with the answer and all other pleadings, are not confidential. ~~Formal~~ Disciplinary hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to ~~censure~~ censure, suspend, or remove any ~~justice or~~ judge. A respondent who is recommended for ~~censure or removal~~censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if ~~he~~the respondent has objections to it, to have the record settled by the ~~Commission.~~Commission's chair. ~~He~~The respondent is also entitled to present a brief and to argue ~~his~~the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of ~~censure~~censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

~~(b) The chair of the Commission is authorized to employ an executive secretary to assist the Commission in carrying out its duties. For specific cases, the Commission may also employ special counsel or call upon the Attorney General to furnish counsel. For specific cases, the Commission may also employ an investigator or call upon the Director of the State Bureau of Investigation to furnish an investigator. While performing duties for the Commission such executive secretary, special counsel or investigator shall have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.~~

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission.

"**§ 7A-378. ~~Censure~~ Censure, suspension, or removal of justice of Supreme Court.**

(a) The recommendation of the Judicial Standards Commission for ~~censure~~ censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for ~~censure~~ censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for ~~censure~~ censure, suspension, or removal of any judge.

(b) The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in service, excluding the judge who is chairman of the ~~commission.~~Commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service."

SECTION 12. In order to provide for an orderly transition in membership to the Judicial Standards Commission to the six-year terms specified in G.S. 7A-375(b), as amended by Section 11 of this act, and notwithstanding G.S. 7A-375(b), as amended by Section 11 of this act, the following provisions apply:

(1) The initial terms of the new district court judge and of one new member of the North Carolina Bar appointed to the Commission effective January 1, 2007, shall be three-year terms.

(2) The initial terms of all other new members appointed to the Commission effective January 1, 2007, shall be six-year terms.

(3) The term of the citizen appointed by the Governor to the Commission effective January 1, 2007, shall be a three-year term.

(4) The term for the citizen appointed by the Governor to the Commission effective January 1, 2010, shall be a three-year term.

SECTION 13. Section 2 of this act is effective when it becomes law and applies to all matters filed with the courts on or after the date that the Supreme Court adopts rules for electronic filing as authorized by that section. Section 3 of this act becomes effective October 1, 2006. Sections 4, 7, and 9 of this act become effective July 1, 2006. Sections 11 and 12 become effective January 1, 2007. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. CSRK-69

H. B. No. 1848 DATE 7/11/06

S. B. No. _____ Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1848-CSRK-69 [v.2]

Rep.)
)
Sen.)

1 moves to amend the bill on page 9, lines 32 through 34
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the lines to read:
4
5 "~~Justice Oversight Committee and the~~
6 LEGISLATIVE Research Commission
7 and the Joint Legislative Oversight
8 Committee on Mental".
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1849 DATE 7-10-06

S. B. No. _____ Amendment No. #1 + #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1849-CSRV-102 [v.2]

Rep.) RAND
Sen.)

moves to amend the bill on page 9, line 31

( ) WHICH CHANGES THE TITLE

by INSERTING BETWEEN THE WORDS "~~THE~~" AND "JOINT"

#2 THE FOLLOWING:

"JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATION'S SUBCOMMITTEES ON JUSTICE AND PUBLIC SAFETY AND HEALTH AND HUMAN SERVICES IN JOINT MEETING AND THE";

AND

#1 ON PAGE 10, LINES 1 THROUGH 11, BY DELETING THE LINES;

AND ON PAGE 10, LINE 27 BY DELETING "9, 10, 11,";

AND BY RENUMBERING THE REMAINING SECTIONS ACCORDINGLY.

SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1848: Omnibus Courts Act

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 7, 2006
Introduced by:	Rep. Hackney	**Summary by:**	O. Walker Reagan
Version:	PCS to Third Edition H1848-CSRU-102		Committee Co-Counsel

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1848 would make various changes to the laws concerning the administration of the courts system including authorization to collect fines by credit card, authorize electronic filings in court, permit criminal background checks of Judicial Department employees, establish permanency mediation, amend the foreign language interpreters program, modify the minimum number of magistrates allocated, and to make other changes as recommended by the Administrative Office of the Courts..***

BACKGROUND: Many of these provisions, as indicated below, were contained in the Senate version of the 2006-2007 budget, SB 1741, but were removed from the Budget Bill in the House, to be considered in a separate bill. **(All references to SB 1741 are to the 3rd edition as passed by the Senate).**

BILL ANALYSIS: **Section 1** of House Bill 1146 would permit the Judicial Department to accept the payments of fines, fees and costs by credit, charge or debit card through a private third-party vendor so as to allow the State to collect funds without discount or a transaction fee, which the vendor would be allowed to collect from the person seeking to make payment by this method. **(Sec. 14.7, SB 1741).**

Section 2 would permit the filing of pleadings and papers in the courts by electronic means pursuant to uniform rules adopted by the Supreme Court. AOC would be permitted to contract with a vendor to provide electronic filing services. Any funds received from the vendor would be deposited to the Court Information Technology Fund.

Section 3 permits the Judicial Department to require its employees, contractors and volunteers to consent criminal history background checks as a condition of their relationship with the Judicial Department. This section authorizes the SBI to conduct State and federal fingerprint-based criminal history background checks for the Judicial Department.

Section 4 directs the AOC to establish a Permanency Mediation Program to mediate issues arising from a juvenile who is alleged or adjudicated to be abused, neglected, dependent or where a petition for termination of parental rights has been filed. Mediations will be confidential and communications in mediation may not be testified to in court. The court may consider incorporating any mediate agreement into a court order. AOC is to use existing funds to implement this program. **(Sec. 14.10, SB 1741).**

Section 5 clarifies AOC's authority to provide foreign language interpreters for indigent defendants and authorizes the AOC to hire permanent staff to serve this purpose when it is more cost-effective to do so. **(Sec. 14.11, SB 1741).**

Section 6 clarifies the authority of the Chief Justice to cancel court sessions and close court offices in the event of adverse weather or other emergency situations.

Section 7 sets the minimum number of magistrates for each county at the current allotment. The minimum/maximum number of magistrates was eliminated in SB 1741. This section also makes conforming changes to delete references to maximum numbers of magistrates from various statutes.

Section 8 eliminates the requirement that the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee study drug treatment courts in North Carolina as enacted earlier this session.

Section 9 authorizes AOC to establish up to 60 positions with funds appropriated to the Technology Initiatives program in the 2006-07 fiscal year.

Section 10 authorizes the AOC to establish 14 positions from receipts during the 2006-07 fiscal year.

Section 11 authorizes AOC to use up to $500,000 in available funds in the 2006-07 fiscal year to allow an increase in mileage reimbursement to Judicial Department employees from 37¢ to the maximum rate allowed under G.S. 138-69(a)(1), which is the business standard mileage rate set by the Internal Revenue Service per mile of travel.

Section 12 amends the Budget Bill by making the increase in juror's fees from simply $12 per day to $20 per day for the 2nd through 5th day, and $40 per day after five days, effective for jurors serving on or after August 7, 2006. In the Budget Bill, SB 1741, this provision was effective July 1, 2006 but the budget authorizing these fee increases will not be certified until sometime after jurors have already been paid in July at the old rate.

Section 13 directs the Administrative Office of the Courts, in conjunction with the North Carolina Equal Access to Justice Commission, North Carolina Bar Association, North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., North Carolina Justice Center, and Pisgah Legal Services, Inc., to study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation, and to report the results of the study to the Joint Appropriations Subcommittee on Justice and Public Safety no later than December 31, 2007.

EFFECTIVE DATE: Section 2 of the bill is effective when it becomes law and applies to all matters filed with the courts on or after the date that the Supreme Court adopts rules for electronic filing as authorized by that section. Section 3 of this act becomes effective October 1, 2006. Sections 4, 7, 9, 10, 11, and 12 of this act become effective July 1, 2006. The remainder of this act is effective when it becomes law.

H 1

HOUSE BILL 1848

Short Title:	No Blank Contribution Checks.	(Public)
Sponsors:	Representatives Hackney, Howard, Eddins, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Gibson, Harrison, Justice, Lucas, Luebke, Martin, McLawhorn, Nye, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Harrell, Hill, Insko, Jeffus, Jones, Lewis, McGee, Preston, Spear, Starnes, Underhill, Walker, and Weiss.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF BLANK CHECKS AS CAMPAIGN CONTRIBUTIONS AND TO DELINEATE WHAT IS LAWFUL AND UNLAWFUL PARTICIPATION BY AN INTERMEDIARY IN POLITICAL FUND-RAISING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.20A. Making a contribution through an intermediary.**

(a) Lawful Contributions Through Intermediaries. – It is lawful for any entity that is not otherwise prohibited from making the contribution to make one through an intermediary as long as all the following conditions are satisfied:

(1) The original contributor, on the instrument with which the contribution is made, makes a complete designation of the amount of the contribution, the date the contribution is made, and the political committee, candidate, or other lawful entity that the contributor intends to be the recipient of the contribution. If the contribution is by check, the contributor must sign and date the check and must complete the amount and payee spaces on the check. If an individual contributor, because of disability, lack of knowledge of the precise name of the contributee, or another justifiable reason, is unable to complete the check or other instrument, that contributor may receive assistance in

completing it, but the substance of the completion shall be entirely at the direction of the contributor.

(2) The contribution is within the limits provided in G.S. 163-278.13.

(3) The transaction is reported by the contributee and the contributor if reporting is required by this Article.

(4) The intermediary is not prohibited from soliciting contributions by G.S. 163-278.13B.

(5) The contribution is delivered to the contributee within 20 days after the intermediary takes possession of the instrument by which the contribution is made.

(b) Unlawful Contributions Through Intermediaries. – It is unlawful for any entity to make a contribution through an intermediary if the conditions of subsection (a) of this section are not satisfied. No one but the contributor shall complete any portion of a contribution check or other contribution instrument. If an individual contributor, because of disability, lack of knowledge of the precise name of the contributee, or another justifiable reason, is unable to complete the check or other instrument, that contributor may receive assistance in completing it, but the substance of the completion shall be entirely at the direction of the contributor.

(c) No Reporting Required of Intermediary. – If a contribution involving an intermediary satisfies the conditions of subsection (a) of this section, the participation of an intermediary of a contribution is not required to be reported.

(d) Duty of Intermediary to Deliver or Return Contribution. – If an intermediary takes possession of a contribution and agrees to forward that contribution to another entity, that intermediary shall forward the contribution to the donee entity or return the contribution to the donor within 20 days of taking possession.

(e) Definition of "Intermediary". – As used in this Article, the term "intermediary" means an entity that receives money or anything of value from an entity with the understanding that it will be forwarded as a contribution by the donor entity to a candidate, political committee, or other entity intended to accept a contribution.

(f) Penalties. – A violation of this section is a Class 2 misdemeanor. A violation of this section constitutes "mak[ing] or accept[ing] a contribution in violation of this Article" for purposes of the imposition of civil penalties under G.S. 163-278.34.

(g) Rules. – The State Board of Elections shall adopt rules for the implementation of this section."

SECTION 2. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.20A, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 3. G.S. 163-278.20 reads as rewritten:

"**§ 163-278.20. Disclosure before soliciting contributions.**

(a) It shall be unlawful for one or more individuals acting in concert, or for any group, committee, club or organization, of any type or nature, of two or more individuals, to solicit, attempt to solicit, or receive contributions for the purpose of supporting a candidate, political committee, referendum committee, or political party without first clearly advising those solicited as follows:

(1) The name of the candidate(s) for whom the contribution will be used; or

(2) The name of the political committee or party for which the funds will be used; or

~~(3) That a decision will be reached later as to the candidate(s), political committee(s), or political party(ies) to be supported and that the contributions solicited will be expended in a manner and for a purpose to be determined at a future date but no later than 20 days prior to the pending primary or general election; or~~

(4) The name of the referendum committee for which the funds will be used.

(b) A violation of this section is a Class 2 misdemeanor."

SECTION 4. This act becomes effective January 1, 2007, and applies to any contribution made or accepted on or after that date and to any contribution received or forwarded on or after that date.

Final Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1024
Committee Substitute Favorable 5/12/05
Third Edition Engrossed 5/18/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1024-PCS50770-RR-69

Short Title: Runoff Changes. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT A PILOT PROGRAM IN WHICH THE INSTANT RUNOFF METHOD OF VOTING WOULD BE USED IN LOCAL ELECTIONS; TO SET THE DATE OF FUTURE SECOND PRIMARIES AT SEVEN WEEKS AFTER THE FIRST PRIMARY; TO REVISE THE MUNICIPAL ELECTION SCHEDULE TO PROVIDE MORE TIME FOR ABSENTEE VOTING AND ELECTION ADMINISTRATION; TO CONFORM NORTH CAROLINA ABSENTEE VOTING LAW TO THE U.S. UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT; TO ALLOW THE BOARDS OF ELECTIONS TO KEEP CONFIDENTIAL THE IDENTITY OF VOTING UNITS USED IN HAND SAMPLE COUNTS UNTIL THE COUNTY CANVASS; TO PROVIDE FOR FILLING MID-ELECTION-YEAR JUDICIAL VACANCIES; AND TO FURTHER AMEND THE LAW CONCERNING JUDICIAL CANDIDACIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The State Board of Elections shall select local jurisdictions in which to conduct a pilot program during the 2007 and 2008 elections for local offices using instant runoff voting. The State Board shall select:

(1) Up to 10 cities for the 2007 elections.

(2) Up to 10 counties for the 2008 elections.

In selecting those local jurisdictions, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted only with the concurrence of the county board of elections that conducts elections for the local jurisdiction. If a city is selected that has voters in more than one county, the concurrence of all the county boards of elections that conduct that city's elections is required. The pilot program shall consist of using instant runoff voting as

the method for determining the winner or winners of a partisan primary or a nonpartisan election that normally uses nonpartisan election and runoff or nonpartisan primary and election. Instant runoff voting may also be used to determine results in an election where nonpartisan plurality elections are normally used, but only if the governing board of the local jurisdiction concurs.

As used in this section, "instant runoff voting" means a system in which voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the most first-choice votes receives the threshold of victory of the first-choice votes, that candidate wins. If no candidate receives the threshold of victory of first-choice votes, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election.

The threshold of victory of first-choice votes for a partisan primary shall be forty percent (40%) plus one vote. The threshold of victory for a nonpartisan election and runoff or nonpartisan primary and election shall be a majority of the vote. The threshold of victory in a contest that normally uses nonpartisan plurality shall be determined by the State Board with the concurrence of the county board of elections and the local governing board.

If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first counting results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won.

Other details of instant runoff voting are as described in House Bill 1024 (First Edition) of the 2005 Regular Session of the General Assembly, with modifications the State Board deems necessary, in primaries and/or elections for city offices, for county offices, or for both. Those modifications may include giving the voter more than three choices in case of multi-seat contests. The State Board shall not use instant runoff voting in a primary or election for an office unless the entire electorate for the office uses the same method.

SECTION 1.(b) The State Board of Elections shall closely monitor the pilot program established in this section and report its findings and recommendations to the 2007 General Assembly.

SECTION 2. G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. – If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held ~~four~~ seven weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second

primary. The second primary is a continuation of the first primary and any voter who files a proper and timely ~~affidavit~~ written affirmation of ~~transfer of precinct,~~ change of address within the county under the provisions of G.S. 163-82.15, ~~before~~ in the first primary may vote in the second primary without having to refile ~~the affidavit of transfer~~ that written affirmation if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

SECTION 3. G.S. 163-279 reads as rewritten:

"**§ 163-279. Time of municipal primaries and elections.**

(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two or four years thereafter as provided by municipal charter on the following days:

(1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.

(2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first primary shall be held on the ~~sixth~~ second Tuesday ~~before the election,~~ after Labor Day, and the second primary, if required, shall be held on the ~~third~~ fourth Tuesday before the election.

(3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.

(4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(b) Notwithstanding the provisions of subsection (a), the next regular municipal primary and election in Winston-Salem shall be held at the time of the primary and election for county officers in 1974, officers elected at that time shall serve terms of office expiring on the first Monday in December, 1977. Beginning in 1977, municipal primaries and elections in Winston-Salem shall be held at the time provided in this section.

(c) Officers of sanitary districts elected in 1970 shall hold office until the first Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary district elections shall be held at the times provided in this section or in G.S. 130A-50(b1)."

SECTION 4. G.S. 163-291 reads as rewritten:

"**§ 163-291. Partisan primaries and elections.**

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county

officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

(1) The dates of primary and election shall be as provided in G.S. 163-279.

(2) A candidate seeking party nomination for municipal or district office shall file ~~his~~ notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the ~~first~~ third Friday in ~~August~~ July preceding the election, except:

a. In 2001 a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

b. In 2002 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary and second primary shall be held on the seventh day following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Thursday following the canvass of the first primary."

SECTION 5. G.S. 163-294.2 reads as rewritten:

"**§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.**

(a) Each person offering himself as a candidate for election to any municipal office in municipalities whose elections are nonpartisan shall do so by filing a notice of candidacy with the board of elections in the following form, inserting the words in parentheses when appropriate:

"Date _____;

I hereby file notice that I am a candidate for election to the office of _____(at large) (for the _____ Ward) in the regular municipal election to be held in_____ on _____, _____

(municipality)

Signed _____

(Name of Candidate)

Witness: _____

FOR THE BOARD OF ELECTIONS"

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the board of elections or the director of elections of that county, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the board of elections. The candidate shall sign the notice of candidacy with his legal name and, in his discretion, any nickname by which he is commonly known, in the form that he wishes it to appear upon the ballot but substantially as follows: "Richard D. (Dick) Roc." A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit, and notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by this sentence, unless another candidate for the same office who files a notice of candidacy has the same last name, the nickname shall be printed on the ballot immediately before the candidate's surname but shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the next sentence of this subsection. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

(b) Only persons who are registered to vote in the municipality shall be permitted to file notice of candidacy for election to municipal office. The board of elections shall inspect the voter registration lists immediately upon receipt of the notice of candidacy and shall cancel the notice of candidacy of any candidate who is not eligible to vote in the election. The board shall give notice of cancellation to any candidate whose notice

of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the county sheriff.

(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the ~~first~~ third Friday in ~~August~~ July preceding the election, except:

(1) In 2001 candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

(2) In 2002 if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails.

(d) Any person may withdraw his notice of candidacy at any time prior to the filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing fee if he does so.

(e) The filing fee for the primary or election shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(f) No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for the election unless the notice of candidacy for the first office is withdrawn first."

SECTION 6. G.S. 163-245 reads as rewritten:

"**§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail ~~and~~ or to vote by ~~military~~ absentee ballot or both in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.
(2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.
(3) Disabled war veterans in United States government hospitals.
(4) Civilians attached to and serving outside the United States with the armed forces of the United States.
(5) Members of the Peace Corps.
(6) Other individuals meeting the definitions of "absent uniformed services voter" and "overseas voter" in the federal Uniformed and Overseas Citizens Absentee Voting Act.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request, and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act."

SECTION 7.(a) G.S. 163-182.1(b) reads as rewritten:

"(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting

systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. Except to the extent necessary for the implementation of the sample count, the boards of elections shall keep the identity of the precincts or other units of voters selected for the sample count confidential until the day set for county canvass.

(2) Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 7.(b) G.S. 163-182.2(b) reads as rewritten:

"(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item

shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. Except to the extent necessary for the implementation of the sample count, the boards of elections shall keep the identity of the precincts or other units of voters selected for the sample count confidential until the day set for county canvass.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 8.(a) G.S. 163-329 reads as rewritten:

"**§ 163-329. Elections to fill vacancy in office created after primary filing ~~period to use plurality method.~~ period opens.**

(a) General. – If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the ~~plurality~~ method ~~as~~ provided in subsection ~~(b)~~(b1) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

~~(b) Plurality Election Rules. — Elections under this section shall be conducted using the following rules:~~

~~(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.~~

~~(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.~~

~~(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.~~

~~(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.~~

~~(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.~~

(b1) Method for Vacancy Election. – If a vacancy for the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

(1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.

(2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the 'instant runoff voting' method shall be used to determine the winner. Under 'instant runoff voting,' voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the greatest number of first-choice votes receives more than fifty percent (50%) of the first-choice votes, that candidate wins. If no candidate receives that

minimum number, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election. If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first count results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won. In multi-seat contests, the State Board of Elections may give the voter more than three choices.

(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(c) Applicable Provisions. – Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

(d) Rules. – The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to Article 2A of Chapter 150B of the General Statutes. The rules shall include the following:

(1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.

(2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.

(3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.

(4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round."

SECTION 8.(b) G.S. 163-327.1 reads as rewritten:

"**§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.**

If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article IV, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

(1) If the vacancy occurs prior to the opening of the filing period under G.S. 163-323(b), nominations shall be made by primary election as provided by this Article, without designation as to the vacancy.

(2) If the vacancy occurs beginning on opening of the filing period under G.S. 163-323(b), and ending on the sixtieth day before the general election, candidate filing shall be as provided by G.S. 163-329 without designation as to the vacancy.

(3) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made or candidates filed under subdivision (1) or (2) of this section. ~~The~~ Except as provided in G.S. 163-329, the persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms. "

SECTION 9.(a) G.S. 163-327 is repealed.

SECTION 9.(b) G.S. 163-328 reads as rewritten:

"**§ 163-328. Failure of candidates to file; death or other disqualification of a ~~candidate before election.~~ candidate; no withdrawal from candidacy.**

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(a1) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) ~~Death or Other Disqualification of Candidate; Earlier~~ Non-Primary Vacancies; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, or if a primary has occurred and eliminated candidates, and thereafter a remaining candidate dies or otherwise becomes disqualified ~~before the election and before the ballots are printed~~, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file

for election, and ~~such~~ that election shall be conducted ~~on the plurality basis.~~as provided in G.S. 163-329(b1).

(c) ~~Vacancy Caused by Nominated Candidate;~~ Later Vacancies; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's ~~death,~~ death or other disqualification, ~~or resignation,~~ and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

(d) No Withdrawal Permitted of Living, Qualified Candidate After Close of Filing. – After the close of the candidate filing period, a candidate who has filed a notice of candidacy for the office, who has not withdrawn notice before the close of filing as permitted by G.S. 163-323(b), who remains alive, and has not become disqualified for the office may not withdraw his or her candidacy. That candidate's name shall remain on the ballot, any votes cast for the candidacy shall be counted in primary or election, and if the candidate wins, the candidate may fail to qualify by refusing to take the oath of office.

(e) Death, Disqualification, or Failure to Qualify After Election. – If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies or becomes disqualified on or after election day and before he has qualified by taking the oath of office, or fails to qualify by refusing to take the oath of office, the office shall be deemed vacant and shall be filled as provided by law."

SECTION 10. Article 22E of Chapter 163 of the General Statutes reads as rewritten:

"**§ 163-278.64A. Special participation provisions for candidates in vacancy elections.**

(a) Participation Provisions Modified. – Candidates involved in elections described in G.S. 163-329 may participate in the Fund subject to the provisions of G.S. 163-278.64 as modified by this section. The Board shall adapt other provisions of this Article, including G.S. 163-278.67, to those elections.

(b) Qualifying. – The State Board of Elections shall designate a special qualifying period of no less than four weeks for these candidates, beginning at the close of the notice-of-candidacy filing period. To receive certification, a participating candidate shall raise at least 225 qualifying contributions, totaling at least 20 times the amount of the filing fee for the office, for a four-week qualifying period. If the State Board of Elections sets a longer qualifying period, then for each additional week that the qualifying period extends beyond four weeks, the minimum number of qualifying contributions required for certification shall increase by 25, and the minimum amount of the qualifying contributions shall increase by two times the filing fee. The minimum qualifying contributions shall not exceed the limit set by G.S. 163-278.64(b).

(c) Allocations. – Certified candidates shall receive one percent (1%) of the funding to which they would be eligible under G.S. 163-278.65 times the number of calendar days between the end of the special qualifying period and the day of the general election. That amount shall not exceed one hundred percent (100%) of the funding to which they would be eligible under G.S. 163-278.65."

SECTION 11. G.S. 163-278.65(c) reads as rewritten:

"(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible ~~funding.~~ funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding."

SECTION 12. G.S. 163-278.66(a) reads as rewritten:

"(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures ~~in excess of three thousand dollars ($3,000)~~ in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds ~~fifty percent (50%) of the trigger for rescue funds.~~ five thousand dollars ($5,000). After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board."

SECTION 13. G.S. 163-278.68(b) reads as rewritten:

"(b) Advisory Council for the Public Campaign Fund. – There is established under the Board the Advisory Council for the Public Campaign Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full ~~terms.~~terms, except that regardless of the time of appointment each term shall end on December 31. A member shall continue on the Advisory Council beyond the expired term until a successor is appointed. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term."

SECTION 14. G.S. 163-278.69(c) reads as rewritten:

"(c) Disclaimer. – The Judicial Voter Guide shall contain the following statement: '~~The above statements~~Statements by candidates do not express or reflect the opinions of the State Board of Elections.'"

SECTION 15. G.S. 163-278.13(e) reads as rewritten:

"(e) ~~This~~ Except as provided in subsections (e2) and (e3) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96."

SECTION 16. G.S. 163-278.13(e2) reads as rewritten:

"(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) No candidate shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before

the day of the general election and ending the day after the general ~~election.~~ election if that contribution causes the candidate to exceed the "trigger for rescue funds" defined in G.S. 163-278.62(18). This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum rescue funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subdivision.

As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign."

SECTION 17. G.S. 163-278.13 is amended by adding a new subsection to read:

"(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign."

SECTION 18. G.S. 105-159.2 reads as rewritten:

"**§ 105-159.2. Designation of tax to North Carolina Public Campaign ~~Financing~~ Fund.**

(a) Allocation to the North Carolina Public Campaign Fund. – To ensure the financial viability of the North Carolina Public Campaign Fund established in Article 22D of Chapter 163 of the General Statutes, the Department must allocate to that Fund three dollars ($3.00) from the income taxes paid each year by each individual with an income tax liability of at least that amount, if the individual agrees. A taxpayer must be given the opportunity to indicate an agreement or objection to that allocation in the manner described in subsection (b) of this section. In the case of a married couple filing a joint return, each individual must have the option of agreeing or objecting to the allocation. The amounts allocated under this subsection to the Fund must be credited to it on a ~~quarterly~~ monthly basis.

(b) Returns. – Individual income tax returns must give an individual an opportunity to agree to the allocation of three dollars ($3.00) of the individual's tax liability to the North Carolina Public Campaign Fund. The Department must make it clear to the taxpayer that the dollars will support a nonpartisan court system, that the dollars will go to the Fund if the taxpayer marks an agreement, and that allocation of the dollars neither increases nor decreases the individual's tax liability. The following statement ~~satisfies the intent of~~ must be used to meet this requirement: ~~"Three dollars~~

~~($3.00) will go to the North Carolina Public Campaign Fund to support a nonpartisan court system, if you agree. Your tax remains the same whether or not you agree."~~ 'Mark 'Yes' to transfer $3 of taxes you pay anyway into this special Fund for voter education materials and for candidates who accept spending limits. Marking 'Yes' does not change your tax or refund.' The Department must consult with the State Board of Elections to ensure that the information given to taxpayers complies with the intent of this section.

The Department must inform the entities it approves to reproduce the return ~~of~~ that they must comply with the requirements of this section and that a return may not reflect an agreement or objection unless the individual completing the return decided to agree or object after being presented with the statement required by subsection (b) of this section and, as available background information or instructions, the information required by subsection (c) of this section. No software package used in preparing North Carolina income tax returns may default to an agreement or objection. A paid preparer of tax returns may not mark an agreement or objection for a taxpayer without the taxpayer's consent.

(c) Instructions. – The instruction for individual income tax returns must include the following explanatory statement: 'The ~~North Carolina~~ N.C. Public Campaign Fund provides an alternative source of campaign money to ~~nonpartisan~~ qualified candidates ~~for the North Carolina Supreme Court and Court of Appeals~~ who ~~voluntarily~~ accept strict campaign spending and fund-raising limits. The Fund also helps finance a Voter Guide with educational materials about voter registration, the role of the appellate courts, and the candidates seeking election as appellate judges in North Carolina. Three dollars ~~($3.00)~~ from the taxes you pay will go to the Fund if you mark an agreement. Regardless of what choice you make, your tax will not increase, nor will any refund ~~you are entitled to~~ be reduced.'"

SECTION 19. Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163-278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.

HB 10-24

INSTRUCTIONS TO VOTERS

a. To vote for your first choice candidate, fill in the oval to the left of the candidate's name in the FIRST CHOICE column.

b. You may also cast votes for alternate second choice and third choice candidates. Marking a second choice or third choice will not defeat your first choice.

c. If any candidate receives over 50% of the total vote in the initial count, that candidate will be declared the winner.

d. If no candidate receives over 50% of the total vote, all candidates will be eliminated except the two candidates with the greatest number of first choice votes, and there will be a second round of counting.

e. In the second round of counting, votes will be counted for whichever remaining candidate is ranked highest on each ballot.

f. To vote for your second choice candidate, fill in the oval to the left of the candidate's name in the SECOND CHOICE column. Do not vote for the same candidate you selected as your first choice.

g. To vote for your third choice candidate, fill in the oval to the left of the candidate's name in the THIRD CHOICE column. Do not vote for the same candidate you selected as either your first or second choice.

FIRST CHOICE	SECOND CHOICE	THIRD CHOICE
Judge (You May Vote For ONE)	**Judge** (You May Vote For ONE)	**Judge** (You May Vote For ONE)
○ Ansley	○ Ansley	○ Ansley
○ Hunter	○ Hunter	○ Hunter
○ Manning	○ Manning	○ Manning
○ McCrodden	○ McCrodden	○ McCrodden
○ Morrison	○ Morrison	○ Morrison
○ Newby	○ Newby	○ Newby
○ Schiller	○ Schiller	○ Schiller
○ Wynn	○ Wynn	○ Wynn

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1024

Short Title:	Instant Runoff Voting.	(Public)
Sponsors:	Representatives Luebke; Fisher and Harrison.	
Referred to:	Election Law and Campaign Finance Reform.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INSTANT RUNOFF VOTING IN STATEWIDE PARTY PRIMARIES AND CERTAIN STATEWIDE JUDICIAL VACANCY ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-111A. Instant runoff voting.**

(a) Definition. – As used in this Chapter, 'instant runoff voting' means a method of casting and counting votes as set forth in this section that accomplishes the same effect as all voters participating in a second primary or runoff election. In casting votes, voters rank candidates by order of preference. In counting votes, ballots are counted in rounds. In the first round, only first-choice votes are counted. If the top candidate receives a substantial plurality of the first-choice votes, that candidate wins. If no candidate receives a substantial plurality in the first round, there is a second round of counting. Only the two candidates with the greatest number of first-choice votes advance to the second round of counting. In this second round, each ballot counts as a vote for whichever of the two final candidates is ranked higher on the ballot. The candidate with the greater number of votes in the second round wins.

(b) Voting. – On every ballot using instant runoff voting, the voters shall be given the opportunity to rank candidates in the order of their preference. Ballots shall be made simple and easy to understand. The instructions for the ballot shall inform the voter of all of the following:

(1) That in addition to marking their first-choice candidate, the voter may rank alternate choice candidates.

(2) That marking a second or other choice candidate can never defeat the voter's first choice.

(c) Counting. – The following procedures shall be used to determine winners in instant runoff voting:

(1) The ballots shall be counted initially according to the first choice marked on each ballot. If one candidate receives a substantial plurality of the votes cast, the board of elections shall certify that candidate as the winner.

(2) If at the end of the initial round of counting, no candidate received a substantial plurality of first choices, all candidates shall be eliminated except the two candidates with the greatest number of first choices. The board of elections shall then conduct a second, final round of counting in which ballots that rank eliminated candidates as a first choice and that indicate one of the uneliminated candidates as an alternative choice shall be counted as votes for whichever of the uneliminated candidates is ranked higher on each ballot. In the second round, each ballot is counted as one vote for the highest ranked candidate on that ballot who has not been eliminated. The candidate with the greater number of votes in the second round shall be certified as the winner.

(d) General Provisions. – The following general provisions shall apply to instant runoff voting:

(1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.

(2) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.

(3) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round."

SECTION 2. G.S. 163-111 reads as rewritten:

"**§ 163-111. Determination of primary results; second primaries.**

(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. – Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section and G.S. 163-111A shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

(b) Right to Demand Second Primary. – If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.

(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) Procedure for Requesting Second Primary. –

(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing with the Executive Director of the State Board of Elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State

Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

~~Governor,~~
~~Lieutenant Governor,~~
~~All State executive officers,~~
District Attorneys of the General Court of Justice,
~~United States Senators,~~
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing with the chairman or director of the county board of elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-county representative districts, and
All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary.

(c1) Primaries for Statewide Offices. – In all primaries for statewide office, if no candidate receives a substantial plurality, the winner shall be determined by instant runoff voting as provided in G.S. 163-111A. In those primaries, instant runoff voting shall be used without the need for the second-place candidate to call for it.

(d) Tie Votes; How Determined. –

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless

one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Date of Second Primary; Procedures. – If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second

primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-82.15, before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) No Third Primary Permitted. – In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163-114."

SECTION 3. G.S. 163-329 reads as rewritten:

"**§ 163-329. Elections to fill vacancy created after primary filing period to use plurality or instant runoff voting method.**

(a) General. – If a vacancy is created in the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of justice of the Supreme Court or judge of the Court of Appeals during the same time period, the vacancy shall be filled by instant runoff voting, as provided in G.S. 163-111A, except that a candidate wins in the first round of counting only if that candidate has a majority of all votes cast. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) ~~Plurality~~ Special Vacancy Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared ~~elected.~~ elected, except that elections for justice of the Supreme Court

and judge of the Court of Appeals shall be determined by instant runoff voting as provided in subsection (a) of this section.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with ~~G.S. 163-182.8.~~ G.S. 163-182.8, except that ties in elections for justice of the Supreme Court and judge of the Court of Appeals shall be resolved by instant runoff voting as provided in subsection (a) of this section. If instant runoff voting results in a tie, the provisions of G.S. 163-182.8 shall apply.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section."

SECTION 4. This act becomes effective January 1, 2008, and applies to any primaries or elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06

Third Edition Engrossed 5/18/06

Short Title: Revise Legislative Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 120 of the General Statutes is repealed.

SECTION 2. Chapter 120 of the General Statutes is amended by adding a new article to read:

"Article 32.

"Legislative Ethics Act.

"Part 1. General Provisions.

"**§ 120-280. Title.**

This Article shall be known and may be cited as the 'Legislative Ethics Act.'

"**§ 120-281. Definitions.**

The following definitions apply in this Article:

(1) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(2) Business associate. – A partner, or member or manager of a limited liability company.

(3) Business with which associated. – A business in which the legislator or any member of the legislator's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded or the fund's assets are widely diversified.

(4) Committee. – The Legislative Ethics Committee.

(5) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Article 163 of the General Statutes.

(6) Confidential information. – Information defined as confidential by statute.

(7) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(8) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(9) Extended family. – Spouse, descendant, ascendant, or sibling of the legislator or, descendant, ascendant, or sibling of the spouse of the legislator.

(10) Immediate family. – An unemancipated child of the legislator residing in the household, and the legislator's spouse, if not legally separated.

(11) Legislative action. – As the term is defined in G.S. 120-47.1.

(12) Legislative employee. – As the term is defined in G.S. 120-47.1.

(13) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(14) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee or independent contractor as of December 31 of the preceding year.

(15) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(16) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the legislator, the legislator's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the legislator, the legislator's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(17) Public event. – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

(18) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the legislator or a member of the legislator's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 120-282 through 120-285. [Reserved]**

"Part 2. Ethical Standards for Legislators.

"**§ 120-286. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the business associate, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(c) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(d) It shall be unethical for a legislator to contact the business associate, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(e) A violation of subsection (a), (b), or (c) of this section is a Class F felony. A violation of subsection (d) of this section is not a crime but is punishable under G.S. 120-325.

"**§ 120-287. Use of public position for private gain.**

(a) A legislator shall not knowingly use the legislator's public position in any manner that will result in financial benefit, direct or indirect, to the legislator, a member of the legislator's extended family, or a person with whom, or business with which, the legislator is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a legislator that the legislator would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the legislator's ability to protect the public interest and perform the legislator's official duties would not be compromised.

(b) A legislator shall not mention or permit another person to mention the legislator's public position in nongovernmental advertising that advances the private interest of the legislator or others. The prohibition in this subsection shall not apply to political advertising, news stories or news articles.

(c) No legislator shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that legislator's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to their official function. This

subsection shall not apply to fundraising on behalf of and aired on public radio or public television.

"**§ 120-288. Disclosure of confidential information.**

No legislator shall use or disclose in any way confidential information gained in the course of the legislator's official activities or by reason of the legislator's official position that could result in financial gain for the legislator or any other person.

"**§ 120-289. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding the hiring, promotion, grievance, or disciplinary action of a State employee subject to Chapter 126 of the General Statutes. It shall be unethical for a legislator to take, promise, or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding the hiring, promotion, grievance, or disciplinary action of an employee of any unit of local government.

"**§ 120-290. Gifts.**

(a) A legislator shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the legislator, or for another person, in return for being influenced in the discharge of the legislator's official responsibilities, other than that which is received by the legislator from the State for acting in the legislator's official capacity.

(b) No legislator or legislative employee shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31.

(c) Subsection (b) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the legislator or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the legislator or legislative employee for a meeting at which the legislator or legislative employee participates in a panel or speaking engagement at the meeting related to the legislator's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, regional or national legislative organization of which the General Assembly, the legislator or legislative employee is a member by virtue of the person's legislative position.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
(8) Gifts accepted on behalf of the State.
(9) Anything generally available or distributed to the general public or all other State employees.
(10) Anything for which fair market value is paid by the legislator or legislative employee.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Article 163 of the General Statutes.
(15) Gifts from the legislator's or the legislative employee's extended family, or a member of the same household of the legislator or the legislative employee, or gifts received in conjunction with a marriage, birth, adoption, or death.

(d) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and immediately donated to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed or provided for consumption among the entire staff or the public.

(e) A legislative employee shall not accept an honorarium from a source other than the General Assembly for conducting any activity where any of the following apply:

(1) The General Assembly reimburses the public servant for travel, subsistence, and registration expenses.
(2) The General Assembly's work time or resources are used.
(3) The activity would be considered official duty or would bear a reasonably close relationship to the legislative employee's official duties.

An outside source may reimburse the General Assembly for actual expenses incurred by a legislative employee in conducting an activity within the duties of the legislative employee, or may pay a fee to the General Assembly, in lieu of an honorarium, for the services of the legislative employee.

(f) The offering, giving, soliciting or receiving a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 120-286, G.S. 14-217 or G.S. 14-218.

"**§ 120-291. Other rules of conduct.**

(a) A legislator shall make a due and diligent effort before taking any action, including voting or participating in discussions with other legislators, to determine

whether the legislator has a conflict of interest. If the legislator is unable to determine whether or not a conflict of interest may exist, the legislator has a duty to inquire of the Committee as to that conflict.

(b) A legislator shall continually monitor, evaluate, and manage the legislator's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A legislator shall obey all other civil laws, administrative requirements and criminal statutes governing conduct of State government appointees and employees.

"**§ 120-292. Participation in legislative actions.**

(a) Except as permitted by subsection (c) of this section, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the legislator's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the legislator's participation in the legislative action. A potential benefit includes a detriment to (i) a business competitor of the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated.

(b) A legislator described in subsection (a) of this section shall abstain from participation in the legislative action. The legislator shall submit in writing the reasons for the abstention to the principal clerk of the house of which the legislator is a member.

(c) Notwithstanding subsection (a) of this section, a legislator may participate in a legislative action under any of the following circumstances:

(1) The only pecuniary or economic interest or reasonably foreseeable benefit that accrues to the legislator, the legislator's extended family, or business with which the legislator is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where a legislative action affects or would affect the legislator's compensation and allowances as a legislator.

(3) Before the legislator participated in the legislative action, the legislator requested and received a written advisory opinion from the Committee that authorized the participation. In authorizing the participation under this subsection, the Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) When action is ministerial only and does not require the exercise of discretion.

(5) When a legislative body records in its minutes that it cannot obtain a quorum in order to take the legislative action because legislators are disqualified from acting under this section.

"**§ 120-293. Employment of members of legislator's extended family.**

A legislator shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the legislator to a State or local office or

position, except for positions at the General Assembly as permitted by the Legislative Services Commission.

"**§ 120-294 through 299. [Reserved]**

"Part 3. Legislative Ethics Committee.

"**§ 120-300. Legislative Ethics Committee established.**

There is established the Legislative Ethics Committee.

"**§ 120-301. Membership.**

(a) The Legislative Ethics Committee shall consist of twelve members, six Senators appointed by the President Pro Tempore of the Senate, among them – three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader, and six members of the House of Representatives appointed by the Speaker of the House, among them – three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Committee during each odd-numbered year, and the cochair appointed by the Speaker of the House shall preside during each even-numbered year. However, a cochair may preside at any time during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Committee, and so indicates in writing to the appointing officer and the Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

"**§ 120-302. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years. An appointee shall serve until the expiration of the appointee's then-current term as a member of the General Assembly.

(b) A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority that made the original appointment. The person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy.

(c) In the event a member of the Committee is unable to act on a specific matter before the Committee, and so indicates in writing to the appointing officer and the Committee, the appointing officer may appoint another member of the respective chamber from a list submitted by the Majority Leader or Minority Leader who nominated the member who is unable to act on the matter to serve as a member of the Committee for the specific matter only. If on any specific matter, the number of members of the Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Committee for that specific matter only.

"**§ 120-303. Quorum; expenses of members.**

(a) Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties.

"**§ 120-304. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee may:

(1) Prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.

(2) Receive and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) Organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed the actual cost.

(4) Preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.

(5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior and to suggest rules of conduct that shall be adhered to by legislators and legislative staff.

(6) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(7) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(8) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(9) Upon receipt of information that a legislator owes money to the State and is delinquent in repaying the obligation, to investigate and dispose of the matter according to the terms of this Article.

(10) Receive and review all statements of economic interest filed with the Committee by prospective and actual legislators and evaluate whether (i) the statements conform to the law and the rules of the Committee,

and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(11) Render advisory opinions in accordance with G.S. 120-307.

(12) Investigate alleged violations in accordance with G.S. 120-306 and to hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(13) Initiate and maintain oversight of ethics educational programs for legislators and legislative employees consistent with G.S. 120-308.

(14) Adopt rules to implement this Article, including those establishing ethical standards and guidelines governing legislators and legislative employees in attending to and performing their duties.

(15) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

"**§ 120-305. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as sections to cover the executive branch of government. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules that the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government.

"**§ 120-306. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Committee, or upon the written request of any legislator, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-304.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) A complaint filed under this Article shall state the name, address, and telephone number of the person filing the complaint, the name of the legislator against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a

violation of this Article has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) The Committee may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(3) In addition to subdivision (2) of this subsection, the Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a copy of the complaint to the legislator who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. The Committee shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-307, or referral to appropriate law enforcement or other authorities pursuant to subsection (i)(2) of this section.

(e) Legislator Cooperation With Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to

cooperate fully with the Committee in any investigation shall be grounds for sanctions under G.S. 120-325.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a legislator or (ii) the complaint does not allege facts sufficient to constitute a violation of this Article, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint, shall be public records.

(h) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant, the legislator, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Committee on a complaint may be held in closed session, but the decision of the Committee shall be announced in open session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation of this Article is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.
b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.
c. Refer the matter to the appropriate house for appropriate action, which shall include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may upon written request to the Committee have the matter referred as provided under subdivision (2)c. of this subsection.

(j) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(k) Findings and Record. – The Committee shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Committee investigations. In all matters in which the complaint is a public record, the Committee shall ensure that a complete record is made and preserved as a public record.

(l) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not a matter of public record, except as otherwise provided in this section.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

"**§ 120-307. Advisory opinions.**

(a) At the request of any legislator, the Committee may render advisory opinions on specific questions involving the meaning and application of this Article and the legislator's compliance with the requirements of this Article. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Committee shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from a finding by the Committee of a violation of this Article.

(b) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(c) The Committee shall interpret this Article by rules, and these interpretations are binding on all legislators upon publication.

(d) The Committee shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 120-308. Ethics education program.**

The Committee shall develop and implement an ethics education and awareness program designed to instill in all legislators and legislative employees a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest. The Committee shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election or employment and shall offer periodic refresher presentations as the Committee deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Committee within three months of the person's election, appointment or employment in a manner as the Committee deems appropriate.

"**§ 120-309 through 314. [Reserved]**

"Part 4. Public Disclosure of Economic Interests.

"**§ 120-315. Purpose.**

The purpose of disclosure of the financial and personal interests by legislators is to assist legislators and those persons who elect them to identify and avoid conflicts of interest and potential conflicts of interest between the individual legislator's private interests and the legislator's public duties. It is critical to this process that current and prospective legislators examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the legislator's private interests and the legislator's public duties. Legislators must take an active, thorough and conscientious role in the disclosure and review process, including having a complete knowledge of how the legislator's public position or duties might impact the legislator's private interests. Legislators have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Article and to fully disclose any conflict of interest or potential conflict of interest between the legislator's public and private interests but the disclosure, review and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 120-316. Statement of economic interest; filing required.**

(a) Every legislator who is elected or appointed shall file a statement of economic interest with the Committee before the legislator's initial election or appointment and, except as otherwise filed under subsection (b) of this section, no later than March 15 every year thereafter. A prospective legislator required to file a statement under this Article shall not be appointed or receive a certificate of election, prior to submission by the Committee of the Committee's evaluation of the statement in accordance with this Article.

(b) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(c) The boards of elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(d) If a candidate for an office subject to this Article does not file the statement of economic interest within the time required by this Article, the county board of elections immediately shall notify the candidate by certified mail, restricted delivery to addressee only, that, if the statement is not received within 15 days, the candidate shall not be certified as the party nominee, or in the case of a candidate nominated by a new party under G.S. 163-98 that the candidate shall be decertified by the State Board of Elections. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. If the delinquent candidate was nominated by a new party under G.S. 163-98, the State Board of Elections shall decertify the candidate, and no county board of elections shall place the candidate's name on the general election ballot as nominee of the party. A vacancy thus created on a party's ticket shall be considered a vacancy for the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114.

(e) Every person appointed to fill a vacant seat in the General Assembly under G.S. 163-11 shall file with the Legislative Services Office and the county board of elections of each county in the senatorial or representative district a statement of economic interest as specified in this Article no later than 10 days after taking the oath of office. If a person required to file a statement of economic interest as required under this section fails to file the statement within the time required by this section, the Legislative Services Officer shall notify the person that the statement must be received

within 15 days of notification. If the statement is not received within the time allowed in this subsection, then the Legislative Services Officer shall notify the Legislative Ethics Committee of the failure of the person to file the statement.

(f) The chair of the board of elections shall forward a certified copy of the statement of economic interest to the Committee for evaluation within 10 days of the date the statement of economic interest is filed with the board of elections.

(g) The Committee shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Article. Except as otherwise set forth in this section, the Committee shall furnish the appropriate forms needed to comply with this Article to legislators.

"**§ 120-317. Statements of economic interest as public records.**

The statements of economic interest filed under this Article, and all other written evaluations by the Committee of those statements, shall be filed with the Legislative Services Office, made available in the Legislative Library, and be public records.

"**§ 120-318. Contents of statement.**

(a) Any statement of economic interest required to be filed under this Article shall be on a form prescribed by the Committee and sworn to by the person required to file. Answers must be provided to all questions. The form shall include the following information about the person and the person's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature, including legal, equitable, or beneficial interest, with a value of at least ten thousand dollars ($10,000) of the person, and that person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the person or the person's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the person and the person's spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each nonpublicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the person shall indicate whether the listed company or entity owns securities or equity interests exceeding

a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the person or a member of the person's immediate family is the beneficiary of a vested trust created, established, or controlled by the person, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the person, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The person shall make a good faith effort to list any individual or business entity with which the person, the person's extended family, or any business with which the person or a member of the person's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the person; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the person. For each individual or business entity listed under this subsection, the person shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the person is a practicing attorney, an indication of whether the person, or the law firm with which the person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedents' estates.
6. Insurance law.

7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the person or the person's immediate family has been associated or has an economic interest, indicating the time period of that association and the relationship with each business as an officer, employee, director, partner, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than one thousand dollars ($1,000) received during the 12 months preceding the reporting period under subsection (b) of this section from sources other than the person's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of five hundred dollars ($500.00) received from any source having business with, or regulated by, the State.

n. A list of all bankruptcies filed during the preceding five years by the person, the person's spouse, or any entity in which the person, or the person's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the person or the person's immediate family is a member.

(3) Each statement of economic interest shall contain the person's sworn certification that the person has read the statement and that, to the best of the person's knowledge and belief, the statement is true, correct, and complete. The person's sworn certification also shall provide that the person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(4) If the person believes a potential for conflict exists, the person has a duty to inquire of the Committee as to that potential conflict.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was signed.

(c) The Committee shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Committee shall submit the evaluation to all of the following:

(1) The person who submitted the statement.
(2) The Legislative Services Office.

"**§ 120-319. Failure to file.**

(a) In addition to the provision of G.S. 120-316, within 30 days after the date due in accordance with G.S. 120-316, for every person from whom a statement of economic interest has not been received by the Committee, or whose statement of economic interest has been received by the Committee but deemed by the Committee to be incomplete, the Committee shall notify the person of the failure to file or complete and shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the person shall be subject to a fine under this section.

(b) Any person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Committee. The Office of the Attorney General shall enforce the collection of fines imposed under this subsection.

(c) Failure by any person to file or complete a statement of economic interest within 60 days of the receipt of the notice required under subsection (a) of this section shall be deemed to be a violation of this Article and shall be grounds for disciplinary action under G.S. 120-325.

"**§ 120-320. Concealing or failing to disclose material information.**

A person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-321. Penalty for false or misleading information.**

A person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class H felon and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-322 through 324. [Reserved]**

"Part 5. Violation Consequences.

"**§ 120-325. Violation consequences.**

(a) Violation of this Article by any legislator or legislative employee is grounds for disciplinary action. Except as specifically provided in this Article or for perjury under G.S. 120-306 and G.S. 120-318, no criminal penalty shall attach for any violation of this Article.

(b) The willful failure of any legislator to comply with this Article shall be deemed a violation of this Article for purposes of G.S. 120-306.

(c) Nothing in this Article affects the power of the State to prosecute any person for any violation of the criminal law.

(d) The Legislative Ethics Committee may request the Office of the Attorney General to seek to enjoin violations of G.S. 120-288."

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"§ 120-32.6. Certain employment authority.

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. Section 1 of this act becomes effective January 1, 2007. The remainder of this act becomes effective October 1, 2006, applies to persons holding office and employed on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 1843:
Part III. Amend Lobbying Laws

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 13, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, Luebke	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	PCS to Third Edition H1843-CSRU-104v.10, page 40		

SUMMARY: Part III of the proposed committee substitute for House Bill 1843 amends North Carolina's lobbying laws to do all of the following:

1. ***Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities, and resulting criminal penalties for violations.***
2. ***Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).***
3. ***Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.***
4. ***Requires reporting of certain campaign contributions by registered lobbyists and lobbyist's principals.***
5. ***Permits the issuance of advisory opinions and requires lobbying education programs.***

CURRENT LAW: Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff is included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

BILL ANALYSIS: **The PCS amends the current lobbying laws in the following ways (Effective when the bill becomes law):**

- Prohibits a legislator or former legislator from being employed as a lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative, Governor's, or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person(legislator or executive branch officer), legislative employee, or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.

The PCS amends the lobbying laws scheduled to take effect January 1, 2007, in the following ways:

- Combines legislative and executive lobbying registrations and regulations into one and places them in a separate chapter.
- The definition of covered person to means legislators, executive branch officers (the same as for Part I of the PCS), and legislative staff.
- Prohibits lobbyists and lobbyist's principals from giving the same gifts to covered persons that those persons cannot accept under Part I of the pcs.
- Treats solicitation of others to lobby as a separate item from direct and indirect lobbying, including for registration and reporting purposes.
- Lobbying expenditures by liaison personnel and State agencies have to be reported the same as lobbying expenditures by lobbyists.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that a fee of $100 is paid for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session if there is a lobbing expenditure made during that month.
- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the lobbying expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the lobbying expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Other expenditures

  The Secretary of State is granted rulemaking authority to facilitate disclosure of lobbying expenditures, including the format of the report and additional categories.
- The lobbyist's principal must also report, in addition to the lobbying expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires reporting of campaign contributions to General Assembly and Council of State races by lobbyists and lobbyist's principals on their quarterly reports.

- Requires reporting of campaign contributions made by another but delivered by the lobbyist or lobbyist principal to the contributee.
- Requires registration by persons incurring expenses for solicitation of others in the following amounts:
    - Over $1,000 for media costs in a calendar quarter.
    - Over $1,000 for mailing costs in a calendar quarter.
    - Over $500 for conference or similar events in a calendar quarter.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.

EFFECTIVE DATE: Except as noted above, the act becomes effective January 1, 2007.

BACKGROUND: In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. House Bill 1849, first edition, is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

Walker Reagan and Brad Krehely contributed to this summary.

H1843e3-SMST-CSRU-104v10, page 40

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-18-06 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
George [illegible]	NCBEV
[illegible]	N.C.B.A.
Bernie Oechsle	Fresh Start Properties
[illegible]	Foster Management, Inc
William R. Harloff	JMR. Short Sale, LLC
[illegible] Eugene Peoples	
LARRY WILLIAMS	REAL ESTATE INVESTORS ASSO.
Ray LaBelle	Triangle Real Estate Investors Assoc.
RICHARD J. KAHAN	Real ESTATE Investor's Assoc
George STEVENSON	"

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-11-06 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Perry. Newsom	Board of Ethics / DOA
Leigh Hayden	Bd of Ethics
Kathleen Edwards	UNC-CH Daily Bulletin
Bryan Ball	Fiscal Research
Todd Barlow	NCATL
Bettie Oakley	TREIA
Denise McCollum	TREIA
MaryEllen Hutchinson	TREIA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — Name of Committee

7-11-06 A-M — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Coldaro	NCACC
Lydia Varn	NCACC
Mark Tawick	Ronald Beam Intern
J.o McCants	AOC
P Bell	AOC
Lana Dobbins	Sen Basnight
Gary O. Bartlett	SBoE
K Sloan	SBOE
Lauren Rogers	NCLPC
Jeff Mixon	civitas
John Bowdish	Duke Zeneca

Principal Clerk ____
Reading Clerk ____

Corrected: AMENDED NOTICE - BILLS REMOVED, BILLS ADDED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 11, 2006	5:45 PM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1848	No Blank Contribution Checks.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 1024	Instant Runoff Voting.	Representative Luebke
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1844	Executive Branch Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1248	Amend Identity Theft Protection Act of 2005.	Representative Goforth Representative Kiser Representative Ray Representative Sutton

Senator Daniel G. Clodfelter, Chair

Judiciary 1, Committee

July 11, 2006 p.m.

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 5:45 p.m. with fifteen members present.

HB-1248(Identity Theft Protection Act of 2005) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney Walker Reagan explained that the bill would amend the Identity Theft Protection Act of 2005 to require governmental entities to report security breached as private entities are required to report, clarifies that redacted personal information is not public records, and exempts the Office of the Secretary of State until July 1, 2007 from the requirement to review all records accessible from the Office's Internet Website and redact any identifying information contained therein. Senator's Tony Rand, Pete Brunstetter, Jeanne Lucas, Vernon Malone, and Andrew Brock had questions. Mr. Josh Stein from the NC Attorney General's office spoke on the bill and answered questions. Mr. Rob Thompson from NC PERG also spoke on the bill. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB1843 (Revise Legislative Ethics Act-1) was re-introduced by Senator Clodfelter, and staff attorney, Walker Reagan explained the bill starting on page 9, Article 2. Senator's Richard Stevens, Jeanne Lucas, Tony Rand, Martin Nesbitt, Harry Brown, Vernon Malone, Pete Brunstetter, and David Hoyle had questions. Senator Clodfelter and Mr. Reagan answered the questions. Senator Clodfelter stated that the bill would be displaced until the next meeting.

Being no further business the meeting adjourned at 6:28 p.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 11, 2006

Senator CLODFELTER,
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) **1248** Amend Identity Theft Protection Act of 2005.

Draft Number:	PCS70800
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Final

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1248*

Committee Substitute Favorable 5/19/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1248-PCS70794-RU-96

Short Title: Amend Identity Theft Protection Act of 2005. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10 is amended by adding the following new subsection to read:

"(c1) If an agency of the State or its political subdivisions, or any agent or employee of a government agency, experiences a security breach, as defined in Article 2A of Chapter 75 of the General Statutes, the agency shall comply with the requirements of G.S. 75-65."

SECTION 2. G.S. 132-1.10 is amended by adding the following new subsection to read:

"(i) Identifying information, as described in subdivision (5) of subsection (b) of this section, shall not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information."

SECTION 3. G.S. 132-1.10(d) reads as rewritten:

"(d) No person preparing or filing a document to be recorded or filed in the official records ~~by~~ of the register of deeds, the Department of the Secretary of State or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 4. G.S. 132-1.10(e) reads as rewritten:

"(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of ~~deeds.~~deeds or the Department of the Secretary of State. The register of deeds or the Department of the Secretary of State may not reject an instrument presented for recording because the instrument contains an individual's personal information."

SECTION 5 G.S. 132-1.10(f) reads as rewritten:

"(f) Any person has the right to request that the Department of the Secretary of State, a register of deeds or clerk of court remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or court to display public records by the Department of the Secretary of State, the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the Department of the Secretary of State, the register of deeds, the clerk of court, their staff, or upon order of the court. The Department of the Secretary of State, the register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 6. G.S. 132-1.10(g) reads as rewritten:

"(g) ~~A~~ The Department of the Secretary of State, a register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer

taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request the Department of the Secretary of State, a register of deeds or clerk of court to remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 7. G.S. 132-1.10(h) reads as rewritten:

"(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to the Department of the Secretary of State, a register of deeds or clerk of court or to ~~his or her agent~~their agents for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court."

SECTION 8. The provisions of G.S. 132-1.10(b)(5) shall not apply to identifying information accessible on the Internet Web site of the Department of the Secretary of State until and after July 1, 2007.

SECTION 9. The Department of the Secretary of State shall study the alternatives and costs for redacting identifying information contained in the records of the Department of the Secretary of State, including the Internet Web site of the Department, and shall report the results of its study to the Office of State Budget and Management and to the House and Senate cochairs of the Joint Appropriations Subcommittee on General Government on or before February 1, 2007. This study shall focus on the most expeditious, cost-effective method of redacting identifying information on or before January 1, 2007.

SECTION 10. Section 1 of this act becomes effective October 1, 2006. Sections 5 through 7 of this act are effective when the act becomes law and expire on July 1, 2007. The remainder of this act is effective when the act becomes law.

7/5/06

HOUSE BILL 1248: Amend Identity Theft Protection Act of 2005.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 5, 2006
Introduced by:	Reps. Goforth, Sutton, Kiser, Ray	**Summary by:**	O. Walker Reagan
Version:	PCS to Second Edition S1248-CSRU-96		Committee Co-Counsel

SUMMARY: ***The Senate Proposed Committee Substitute for House Bill 1248 would amend the Identity Theft Protection Act of 2005 to require governmental entities to report security breaches as private entities are required to report, clarifies that redacted personal information is not public records, and adds the Office of the Secretary of State to the clerks of court and register of deeds as offices that do not need to review all records filed with their offices and redact any identifying information contained therein.***

CURRENT LAW: Current law requires private entities that possess identifying information, as defined in the law, to notify affected parties if security is breached on confidential identifying information under their control. This same requirement does not apply to governmental entities that suffer the same kind of breach. The law requires governmental agencies to segregate identifying information in the public records and not include this information on public records given to the public. Clerks of court and registers of deeds are not require to purge existing databases of identifying information, but are required to redact that information when specifically requested by the person whose identifying information is contained on a public record under the control of the clerk or register of deed.

BILL ANALYSIS: Section 1 of the bill makes two changes relative to obligations of governmental entities regarding personal identifying information held by the entity.

The new G.S. 132-1.10(c1) requires governmental entities to follow the same notification requirements applicable to non-governmental entities, in the event that security is breached with regards to personal identifying information held by the governmental entity.

The new G.S. 132-1.10(i) clarifies that identifying information held by a governmental entity that is segregated or redacted from a public record is not a public record, but the record from which the identifying information is removed remains a public record.

Sections 2 through 6 adds the Office of the Secretary of State to the list of public registry that includes the registers of deeds and clerks of court for which databases containing identifying information do not have be purged of that information, except when expressly requested by the person whose identifying information is in the public records. The section also prohibits a person from filing a document with the Secretary of State contains identifying information, except under special circumstances.

EFFECTIVE DATE: Section 1 of the bill becomes effective October 1, 2006. The remainder of the bill is effective when it becomes law.

7/5/06

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1248*

Committee Substitute Favorable 5/19/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1248-CSRU-96 [v.3]

7/5/2006 11:50:14 AM

Short Title: Amend Identity Theft Protection Act of 2005. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10 is amended by adding the following new subsections to read:

"(c1) If an agency of the State or its political subdivisions, or any agent or employee of a government agency, experiences a security breach, as defined in Article 2A of Chapter 75 of the General Statutes, the agency shall comply with the requirements of G.S. 75-65.

...

(i) Identifying information, as described in subsection (b)(5) of this section shall not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information."

SECTION 2. G.S. 132-1.10(d) reads as rewritten:

"(d) No person preparing or filing a document to be recorded or filed in the official records ~~by~~ of the register of deeds, the Department of the Secretary of State or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 3. G.S. 132-1.10(e) reads as rewritten:

"(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of ~~deeds.~~deeds of the Department of the Secretary of State. The register of deeds or the Department of the Secretary of State may not reject an instrument presented for recording because the instrument contains an individual's personal information."

SECTION 4. G.S. 132-1.10(f) reads as rewritten:

"(f) Any person has the right to request that the Department of the Secretary of State, a register of deeds or clerk of court remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or court to display public records by the Department of the Secretary of State, the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the Department of the Secretary of State, the register of deeds, the clerk of court, their staff, or upon order of the court. The Department of the Secretary of State, the register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 5. G.S. 132-1.10(g) reads as rewritten:

"(g) ~~A~~ The Department of the Secretary of State, a register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer

taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request the Department of the Secretary of State, a register of deeds or clerk of court to remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation."

SECTION 6. G.S. 132-1.10(h) reads as rewritten:

"(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to the Department of the Secretary of State, a register of deeds or clerk of court or to ~~his or her agent~~their agents for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court."

SECTION 7. Section 1 of this act becomes effective October 1, 2006. The remainder of this act is effective when the act becomes law.

HB-1248

From: "Kathryn Doherty" <kdoherty@manpowernc.com>
To: <hmontgomery@sosnc.com>
Date: 7/5/2006 6:45:00 PM
Subject: Manpower Project

Hi Haley,

Based on the information you provided regarding your administrative project, Manpower estimates a cost of approximateiy $3 million. This cost is based on the following assumptions:

* 67 Employees for One Year
* Recruiting and Screening Costs
* Office Supplies
* Facility/Property Costs
* Information Systems
* Payroll Costs
* Management Fees
* Administrative Fees

After further discussions Manpower would provide a more thorough analysis and proposal. Additionally Manpower is able to tailor custom solutions as needed. Please let me know if you have any question or need additional information. You can contact me on my cell phone at 632-0565 if you need to get in touch with me tonight.

Thank you,

Kate Doherty
Branch Supervisor

Manpower
1122 Oberlin Road
Raleigh
NC, 27605

T: 919-851-1828
F: 919-851-7235
kdoherty@manpowernc.com
www.manpower.com <http://www.manpower.com/>

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1248*

Short Title:	Identity Theft Protection Act of 2005.	(Public)
Sponsors:	Representatives Goforth, Sutton, Kiser, Ray (Primary Sponsors); Adams, Barnhart, Bell, Bordsen, Carney, Coates, Coleman, Cunningham, Dickson, Dollar, England, Faison, Farmer-Butterfield, Fisher, Gibson, Glazier, Goodwin, Hackney, Haire, Harrell, Harrison, Jeffus, Ed Jones, Martin, McLawhorn, Owens, Rapp, Ross, Tucker, Underhill, Wainwright, Williams, and Wray.	
Referred to:	Judiciary III.	

April 18, 2005

A BILL TO BE ENTITLED

AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Identity Theft Protection Act.

"**§ 75-60. Title.**

This Article shall be known and may be cited as the "Identity Theft Protection Act".

"**§ 75-61. 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. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.

(2) "Consumer". – An individual.

(3) "Consumer reporting agency". – Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit

information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) "Consumer report" or "credit report". – Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

a. Credit to be used primarily for personal, family, or household purposes;

b. Employment purposes; or

c. Any other purpose authorized under 15 U.S.C. § 168lb.

(5) "Credit card". – Has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).

(6) "Credit header information". – Written, oral, or other communication of any information by a consumer reporting agency regarding the social security number of the consumer, or any derivative thereof, and any other personally identifiable information of the consumer that is derived using any nonpublic personal information, except the name, address, and telephone number of the consumer if all are listed in a residential telephone directory available in the locality of the consumer.

(7) "Debit card". – Any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(8) "Disposal" includes:

a. The discarding or abandonment of records containing personal information, and

b. The sale, donation, discarding or transfer of any medium, including computer equipment, or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.

(9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(10) "Personal information". – An individual's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b) or any identifying information, when not in connection with the individual's first name or first initial and last name, that if compromised would be sufficient to perform or attempt

to perform identity theft against the person whose information was compromised.

(11) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. "Records" 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.

(12) "Security breach". – Unauthorized acquisition of records or data that compromises the security, or confidentiality of personal information. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach, provided that the personal information is not used for a purpose unrelated to the business or subject to further unauthorized disclosure.

(13) "Security freeze". – Notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

"**§ 75-62. Social security number protection.**

(a) Except as provided in subsection (b) of this section, a business may not do any of the following:

(1) Intentionally communicate or otherwise make available to the general public an individual's social security number.

(2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless State or federal law requires the social security number to be on the document to be mailed.

(6) Sell, lease, loan, trade, rent, or otherwise disclose an individual's social security number to a third party for any purpose without written consent to the disclosure from the individual.

(b) Subsection (a) of this section shall not apply in the following instances:

(1) Subsection (a)(5) of this section shall not apply when a social security number is included in an application or in documents related to an enrollment process, or to establish an account, contract, or policy. A

social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) Subsection (a)(6) of this section shall not apply:

a. To the collection, use, or release of a social security number for internal verification or administrative purposes provided that no consideration is exchanged between the person and the third party for the collection, use, or release of the social security number.

b. To the collection, use, or release of a social security number to investigate or prevent fraud or to conduct background checks.

c. To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

d. To a business providing the social security number to a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(c) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this Article are implemented on or before the dates specified in this section.

(d) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees.

(e) This section becomes effective July 1, 2006.

"**§ 75-63. Security freeze.**

(a) If a consumer elects to place a security freeze on his or her credit report, a credit reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer may elect to place a "security freeze" on his or her credit report by making a request directly to a consumer reporting agency by any of the following methods:

(1) By certified mail.

(2) By telephone by providing certain personal identification.

(3) Through a secure electronic mail connection if such connection is made available by the agency.

(c) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written or telephone request from the consumer or three business days after receiving a secure electronic mail request.

(d) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the

same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(e) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer reporting agency via telephone, certified mail, or secure electronic mail, request that the freeze be temporarily lifted, and provide all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (d) of this section.

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (e) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency may develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act (e-Sign) for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (e) of this section in an expedited manner.

(h) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsection (e) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subsection, the consumer reporting agency shall notify the consumer in writing five business days prior to removing the freeze on the consumer's credit report.

(i) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(j) If a third party requests access to a consumer credit report on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit reporting agency must notify the consumer that an attempt has been made to access the credit report and by whom.

(k) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze

within three business days of receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification, and

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (d) of this section.

(l) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(m) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

(n) A consumer may not be charged for any security freeze services, including, but not limited to, the placement or lifting of a security freeze. A consumer, however, can be charged no more than five dollars ($5.00) only in the following discrete circumstances:

(1) If the consumer fails to retain the original personal identification number provided by the agency, the consumer may not be charged for a one-time reissue of the charge no more than five dollars ($5.00) for subsequent instances of loss of the personal identification number.

(2) The consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time the consumer requests a security freeze on his or her credit report be temporarily lifted pursuant to subsection (e) of this section within a calendar year.

(3) For consumers that remove a security freeze pursuant to subsection (k) of this section, the consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time the consumer requests a security freeze be placed on his or her credit report be placed pursuant to subsection (b) within a calendar year.

(o) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"**North Carolina Consumers Have the Right to Obtain a Security Freeze.**

You may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency.
(2) Proper identification to verify your identity.
(3) Proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze – either for a period of time if you are shopping around or specifically for a certain creditor – a few days before actually applying for new credit.

If you lift your freeze more than two times in a calendar year, you may be charged no more than five dollars ($5.00) for each subsequent time you wish to impose a security freeze on your credit report. You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(p) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt.
(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (e) of this section for purposes of facilitating the extension of credit or other permissible use.
(3) Any person acting pursuant to a court order, warrant, or subpoena.
(4) A State or local agency which administers a program for establishing and enforcing child support obligations.
(5) The State or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.
(6) A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act.
(7) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(8) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(q) If a consumer reporting agency erroneously, whether by accident or design, violates the security freeze by releasing credit information that has been placed under a security freeze or violates any other provision in this section, the affected consumer is entitled to:

(1) Notification within five business days of the release of the information, including specificity as to the information released and the third-party recipient of the information.

(2) File a civil action pursuant to G.S. 75-16. In addition to the remedies therein, a consumer may recover statutory damages of one thousand dollars ($1,000) per violation and seek injunctive relief to prevent or restrain further.

"**§ 75-64. Protection for credit header information.**

(a) A consumer reporting agency may furnish a consumer's credit header information only to those who have a permissible purpose to obtain the consumer's consumer report under section 604 of the federal Fair Credit Reporting Act, as codified in 15 U.S.C.§ 1681(b), or in the following circumstances:

(1) When acting pursuant to a court order, warrant, or subpoena or when otherwise required by law.

(2) To a federal, State, or local government entity, including a law enforcement agency, or court, or their agents or assigns.

(3) To investigate or prevent fraud or to conduct background checks.

(4) To financial institutions for compliance with Section 326 of the USA PATRIOT Act.

(b) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), which ever is greater, plus reasonable court costs and attorneys' fees.

"**§ 75-65. Destruction of personal information records.**

(a) Any business that conducts business in North Carolina and any business that maintains or otherwise possesses personal information of a resident of North Carolina must take all reasonable measures to protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures must include, but may not be limited to:

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that information cannot be practicably read or reconstructed;

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other non-paper media containing personal information so that the information cannot practicably be read or reconstructed;

(3) Implementing and monitoring compliance with policies and procedures that require reasonable steps to be taken to ensure that no unauthorized person will have access to the personal information for the period between the discarding of the record and the record's destruction.

(4) Comprehensively describing and classifying procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity, including corporate and employee handbooks and similar corporate documents.

(c) A business may after due diligence enter into a written contract, with and monitor compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include, but may not be limited to, one or more of the following:

(1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent.

(2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review.

(3) Reviewing and evaluating the disposal business's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in North Carolina or disposes of personal information of residents of North Carolina must take all reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information.

(e) This section does not apply to any bank or financial institution that is subject to the privacy and security provision of the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq., as amended, or any health insurer that is subject to the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.

(f) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees.

"**§ 75-66. Protection from security breaches.**

(a) Except as provided in subsection (b) of this section, any business that maintains or otherwise possesses personal information of residents of North Carolina or any business that conducts business in North Carolina that maintains or otherwise possesses personal information of consumers in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security

breach following discovery or notification of the breach. The disclosure notification shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, or with any measures necessary to determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system.

(b) A business shall not be required to disclose a technical security breach that does not seem reasonably likely to subject consumers to a risk of criminal activity.

(c) The notice required by this section may be delayed if a law enforcement agency determines that notification may impede a criminal investigation. The notice required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the data collector demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or the data collector does not have sufficient contact information. Substitute notice shall consist of all the following:

a. E-mail notice when the data collector has an e-mail address for the subject persons.

b. Conspicuous posting of the notice on the data collector's Web site page, if one is maintained.

c. Notification to major statewide media.

(e) Any waiver of the provisions of this Article is contrary to public policy, and is void and unenforceable.

(f) A violation of this section is a violation of G.S. 75-1.1. An individual may bring a civil action against a business that violates this section and may recover pursuant to G.S. 75-16 or may recover statutory damages of one thousand dollars ($1,000), whichever is greater, plus reasonable court costs and attorneys' fees."

SECTION 2. G.S. 14-113.21 reads as rewritten:

"**§ 14-113.21. Venue of offenses.**

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in ~~any county in which~~ the county where the victim resides, where the perpetrator resides, where any part of the financial identity fraud took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever actually present in that county."

SECTION 3. Article 19C of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-113.21A. Investigation of offenses.**

(a) A person who has learned or reasonably suspects that he or she has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over his or her actual residence. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency may take the complaint, issue an incident report, and provide the complainant with a copy of the report and may refer the report to a law enforcement agency in that different jurisdiction.

(b) Nothing in this section interferes with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed or report issued under this section is not required to be counted as an open case for purposes such as compiling open case statistics."

SECTION 4. Chapter 132 is amended by adding a new section to read:

"**§ 132-1.8. Social security numbers and other personal identifying information.**

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsection (c) of this section, any State or local government agency, or any agent, employee, or contractor of a government agency, shall not do any of the following:

(1) Collect a person's social security number unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a person's social security number, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a public records request.

(3) Fail, when collecting a person's social security number, to provide, at the time of or prior to the actual collection of the social security number by that agency, that person upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information," as used in this section, shall have the same meaning as in G.S. 14-113.20(b).

(6) Print an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit his or her social security number overt the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless State or federal law required that the social security number be on the document to be mailed.

(10) Sell, lease, loan, trade, rent, or otherwise disclose an individual's social security number to a third party for any purpose without written consent to the disclosure from the individual.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) Social security numbers and identifying information may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) Social security number or other identifying information may be disclosed pursuant to a court order, warrant, or subpoena.

(d) No person preparing or filing a document to be recorded in the official records by the register of deeds may include any person's social security number or other identifying information in that document, unless otherwise expressly required by law. If a social security number or other identifying information is or has been included in a document presented to the register of deeds for recording in the official records of the county before, on, or after the effective date of this section, it may be made available as part of the official record available for public inspection and copying.

(e) Any person or the person's attorney or legal guardian, has the right to request that a register of deeds remove, from an image or copy of an official record placed on a

register of deeds' publicly available Internet website or a publicly available Internet website used by a register of deeds to display public records or otherwise made electronically available to the general public by such register, his or her social security number or other identifying information contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds. The request must specify the identification page number that contains the social security number or other identifying information to be redacted. The register of deeds shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction. No fee will be charged for the redaction of a social security number or other identifying information pursuant to such request.

(f) A register of deeds shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet website or remote electronic site made available by the register of deeds and used for the ordering or display of official records or images or copies of official records a notice, stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation in the official records may not include a social security number or other identifying information as defined in G.S. 14-113.20(b) in such document, unless expressly required by law.

(2) Any person has a right to request a register of deeds to remove, from an image or copy of an official record placed on a register of deeds' publicly available Internet website or on a publicly available Internet website used by a register of deeds to display public records or otherwise made electronically available to the general public, any social security number or other identifying information as defined in G.S. 14-113.20(b) contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds. The request must specify the identification page number that contains the social security number or other identifying information to be redacted. No fee will be charged for the redaction of a social security number or other identifying information pursuant to such a request.

(g) Any affected person may petition the superior court for an order directing compliance with this section.

(h) This section shall take effect on October 1, 2005, except that subsections (b)(6) and (b)(9) of this section shall take effect July 1,2007."

SECTION 5. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Miscellaneous.

"**§ 120-61. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.**

Agencies of the State of North Carolina shall evaluate and report to the General Assembly about their efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose."

SECTION 6. G.S. 14-113.20 reads as rewritten:

"**§ 14-113.20. ~~Financial identity fraud~~Identity theft.**

(a) A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term "identifying information" as used in this Article includes the following:

(1) Social security numbers.
(2) Drivers ~~license~~ license, State identification card, or passport numbers.
(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
(8) Electronic identification ~~numbers.~~numbers, names, or other identification.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.
(11) Biometric data.
(12) Fingerprints.
(13) Passwords.
(14) Parent's legal surname prior to marriage.

(c) It shall not be a violation under this Article for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so."

SECTION 7. The Revisor of Statutes shall make the following technical and conforming corrections:

(1) Rename Article 19C of Chapter 14 of the General Statutes from "Financial Identity Fraud" to "Identity Theft."

(2) Replace the phrase "financial identity fraud" with the phrase "identity theft" wherever the terms appear throughout Article 19C of Chapter 14 of the General Statutes.

SECTION 8. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person ~~to commit an infraction or crime~~ and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction."

SECTION 9. G.S. 1-539.2C reads as rewritten:

"**§ 1-539.2C. Damages for identity ~~fraud.~~theft.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil damages. Damages may be in an amount of up to five thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party."

SECTION 10. Severability. – The provisions of this act are severable. If any phrase, clause, sentence, provision, or section is declared to be invalid or preempted by federal law or regulation, the validity of the remainder of this act shall not be affected thereby.

SECTION 11. Effective Date. – This act becomes effective December 1, 2005, and shall be applicable to offenses occurring, and to actions arising, on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

4-11-06 PM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Edwards	UNC-CH Daily Bulletin
Paula A. Wolf	ACLU-NC
Dick Gorelick	atty.
Larry Bewley	LBA
Julie Wilder	Speaker's Office
Doug Heron	NC Bar Association
Andy Ellen	NCAWA
Elizabeth Dalton	NCRMA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — Name of Committee

7-11-06 PM — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCATL
[illegible]	NCATL
[illegible]	NC AGO
Josh Stein	"
[illegible]	NCPDRL
[illegible]	Ed Mgt Assoc
Perry Newson	Bd. of Ethics
[illegible]	NCFPC
Rob Schofield	NCCNP
Joal Broun	NC SOS
Robert Wilson	NC SOS

HOUSE BILL 1843:
State Government Ethics Act - 1

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 11, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, Luebke	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to Third Edition H1843-CSRU-104		

SUMMARY: The Proposed Senate Committee Substitute for House Bill 1843 creates an independent ethics commission to oversee the administration of certain ethics laws that apply to the executive branch, the legislative branch, and, to a limited degree, the judicial branch. The bill codifies Executive Order No. One, modifies the existing Legislative Ethics Act, substantially conforms ethics laws applying to legislators to those applicable to the executive branch, and requires certain judicial officials to file statements of economic interest with the independent commission.

CURRENT LAW:

Executive Branch. - Ethics in the executive branch is primarily regulated by Executive Order No. One (Order) issued by the Governor, most recently on January 1, 2001. Under the Governor's limited authority in this area, the Governor has made the order applicable to appointees of the Governor. In addition, the Governor has offered the services of the State Ethics Board (created by the Order) to members of the Council of State and their appointees, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors. The Order requires covered officials to file statements of economic interests annually. It establishes rules of conduct for covered officials. The Board is authorized to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. The decisions of the Board are advisory, and enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority. All records of the Board are public, including statements of economic interest filed by perspective appointees prior to their appointment. False statements made on statements of economic interest are not subject to the penalty of perjury. The Governor does not have the authority to require other constitutional officers of the State to participate under the Order or the authority to make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

Legislative Branch. - The current Legislative Ethics Act was originally enacted in 1975 and consists of three Parts. Part 1 is the Code of Legislative Ethics that defines certain conduct involving legislators that would be either criminal or unethical conduct and what constitutes a conflict of interest for legislators. Part 2 sets out the requirements for legislator's statements of economic interest. Part 3 establishes the Legislative Ethics Committee and defines the powers and authority of the Committee including the responsibility for overseeing the statement of economic interest process, issuing ethics advisory opinions, and conducting investigations of alleged unethical conduct.

Judicial Branch. - Article IV of the Constitution establishes the Judicial Branch. Covered by this Article are all justices and judges of the General Court of Justice, magistrates, clerks of court, district attorneys and the Administrative Office of the Courts. The responsibility for ethics in the judicial branch has been delegated to the North Carolina Supreme Court by statute. The Supreme Court has the authority to prescribe standards of judicial conduct (G.S. 7A-10.1) which the Court has done in the Code of Judicial Conduct, which forth standards for judicial integrity, independence, impropriety, impartiality and diligence, extra-judicial conduct (social, civil and outside business), and political conduct. The legislature has also created the Judicial Standards Commission, made up of judges, private attorneys, and non-lawyer private citizens, to receive and investigate complaints of judicial misconduct, and submit its findings and recommendations to the Supreme Court for disciplinary action, including censure or remove a judge for certain judicial misconduct.

BILL ANALYSIS: The Proposed Senate Committee Substitute for House Bill 1843 does the following:

ARTICLE 1 sets out the purpose of the Act and the applicable definitions.

G.S. 138A-3 sets out the following definitions used in the Chapter:

Board - Any non-advisory State branch board, commission, council, committee, task force, authority, or similar body created by statute or executive order.

Covered Person – Legislator, public servant, or judicial employee. no judges

Extended Family – Spouse, lineal descendants and ascendants, sibling and sibling's spouse of the covered person, and lineal descendants and ascendants, sibling, and sibling's spouse of the spouse of the covered person.

Judicial employees – The director and assistant director of the Administrative Office of the Courts and any other person designated by the Chief Justice earning more than $60,000 per year from the State.

Public event – An organized gathering of individuals open to the general public or to which at least ten public servants or a recognized group of legislators are invited to attend and at least ten employees or members of the principal or person actually attend.

Public servants – All Council of State members, heads of all principal State departments, chief deputies and administrative assistants, confidential assistants and secretaries, employees of the Office of the Governor, persons designated as exempt from the State Personnel Act, voting members of all boards (defined) whether appointed by the executive, legislative, or judicial branch, the UNC Board of Governors, the UNC president and vice-presidents, chancellors, vice-chancellors, members of UNC boards of trustees, members of the State Board of Community Colleges, President and chief financial officer of the Community College System, presidents, chief financial officers and trustees of local community colleges, and contract employees filling any of these positions.

ARTICLE 2 establishes the State Ethics Commission as an independent, bipartisan commission of eight members, 4 appointed by the Governor, of which no more than 2 may be of the same political party, 4 appointed by the General Assembly, 2 each on the recommendation of the President Pro Tempore and the Speaker, of which no more than 1 each may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-10 sets out the powers of the Commission.

G.S. 138A-12 sets out the authority of the Commission to conduct ethics investigations and to hold hearings on alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties committed by public servants and judicial employees. Complaints receive against legislators and judicial officers are referred to either the Legislative Ethics Committee, the Judicial Standards Commission,

or the senior resident superior court judge in the county or district for district attorneys and clerks of court. After a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a private admonishment, or recommend other sanctions to the employing or appointing authority. Complaints and investigations are not public records until the employing authority imposes sanctions. Hearings are generally held in closed session. The Commission has subpoena authority when authorized by the court.

G.S. 138A-13 grants the Commission authority to issue advisory opinions to legislators, public servants and judicial employees. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public.

G.S. 138A-14 sets out the requirement for the Commission to provide for mandatory ethics education programs for all public servants and judicial employees and their immediate staffs (individuals who report directly to the public servant), and legislators and legislative staff.

G.S. 138A-15 sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws, remind public servants of their ethical obligations, remind their fellow public servants about conflicts of interests and appearances of conflicts of interests, and arrange and promote in-house ethics education programs.

ARTICLE 3 sets out the requirements for filing statements of economic interests.

G.S. 138A-22 requires all judicial officials (justices, judges, district attorneys, clerks of court), public servants, except employees earning $60,000 or less, judicial employees, and legislators to file statements of economic interest (SEI) prior to their initial appointment, election, or employment and no later than March 15th of every year thereafter. An exception is made for appointees of newly elected constitutional officers, who have 30 days from the date of appointment or employment to file, when the appointment or employment is done within the first 60 days of the initial term in office. This section sets forth the requirement and procedure for candidates for judgeships and the Council of State to follow for filing their SEI, in the same manner as is required for candidates for the General Assembly.

G.S. 138A-23 makes statements of economic interest public records when filed, except SEI's of perspective appointees or employees do not become public until the person is appointed or employed.

G.S. 138A-24 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of $10,000 in real estate holdings, personal property, business interests including stocks and bonds, interests in vested trusts, bank accounts, sources of income, businesses owned in the previous 5 years; gifts in excess of $200 from persons other than extended family members; bankruptcies; and directorships of businesses. The statement also requires lists of memberships and associations in organizations over which the public servant's agency or

board has jurisdiction, and felony convictions. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Commission is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 138A-25 requires the Commission to notify every filing person who fails to file or complete his or her required SEI within 30 days of the due date. Any filing person currently in office who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a $250 fine. Any filing person currently in office who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under Article 5.

G.S. 138A-26 makes it a Class 1 misdemeanor for a filing person to knowingly conceal or fail to disclose required information on a SEI.

G.S. 138A-41 makes it a Class H felony for a filing person to provide false or misleading information on a SEI knowing the information to be false or misleading.

ARTICLE 4 establishes ethical standards for covered persons.

G.S. 138A-31 prohibits covered persons from using their public position for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising that advances the private interest of the public servant or others. Use of the public servant's title is permitted for political advertising and other limited persons.

G.S. 138A-32 restricts gifts that public servant, legislator or legislative employee can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinate State employees. It prohibits covered persons from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the State. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, lodging, transportation, entertainment and recreation provided in connection with a public event by a chamber of commerce, informational materials related to the covered person's duties, expenses associated with a speech or panel related to the covered person's public duties, items or services related to an organization to which the public servant or the public servant's agency belongs, items or services received at an educational conference or meeting, a plaque or nonmonetary recognition memento, gifts accepted on behalf of the State, anything available to the general public or all State employees, commercially available loans made on terms not more favorable than available to the public, contractual relationships or business relationships not made for the purpose of lobbying, scholarships on terms not more favorable than scholarships generally available to the public, things of monetary value associated with travel and tourism and industry recruitment under certain conditions, gifts of less than $100 received in a foreign country as part of a trade mission, anything for which fair market value or face value was paid, legal campaign contributions, gifts from extended family members, and gifts received in conjunction with a wedding, birth, adoption or death.

This section also specifies that a gift accepted or solicited in compliance with this section without corrupt intent shall not constitute bribery.

G.S. 138A-33 prohibits public servants and judicial employees from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-34 prohibits public servants and judicial employees from using information gained in their official positions for personal financial gain.

G.S. 138A-35 requires public servants to use due diligence to determine if they have a conflict of interest and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-36 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has a pecuniary interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance.

G.S. 138A-37 defines conflicts of interest for legislators. A legislator should not act on a legislative matter if the legislator has a pecuniary or economic interest in the matter being considered that would be substantially influence the legislator's independence of judgment on the matter.

G.S. 138A-38 sets out numerous exceptions to the restrictions in G.S. 138A-36 and 37, primarily involving situations where the benefit is no greater to the public servant, judicial employee or legislator than to the public in general, or when the public servant, judicial employee or legislator has received an ethics opinion that no conflict exists.

G.S. 138A-39 establishes a process where a public servant or judicial employee can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant or judicial employee from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-40 prohibits a covered person from hiring or supervising a member of his or her extended family, except for legislators as permitted by the Legislative Services Commission.

G.S. 138A-41 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

ARTICLE 5 sets out the sanctions for violation of the Act. Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment. Willful violations by legislators subject them to sanctions by the house of which they are a member.

SECTION 2 exempts the Commission from all provisions of Chapter 150B, The Administrative Procedure Act, except for Article 4, Judicial Review.

SECTION 3 directs the Codifier of Rules to publish the rules and advisory opinions of the Commission.

SECTIONS 5 through 15 make conforming changes to the Legislative Ethics Act to reflect duties given to the State Ethics Commission with regards to legislative ethics including he filing of statements of economic interests, ethics education, advisory opinions and receipt of ethics complaints. **Section 8** expands the Legislative Ethics Committee from 10 to 12 members and requires equal partisan representation in each house on the Committee. **Section 13** recodifies the law authorizing the Committee to conduct ethics investigations consistent with the authority given to the State Ethics Commission to investigate complaints against public servants and judicial employees. **Section 14** amends the authority of the Committee with regards to advisory opinions by giving the Committee authority to modify or override advisory opinions give to legislators by the State Ethics Commission.

SECTION 16 modifies the Department of Transportation ethics laws to conform to the changes made in Section 1 of the bill for other executive branch public officials.

SECTION 17 transfers the assets and personnel of the State Ethics Board to the State Ethics Commission.

EFFECTIVE DATE: Most of the bill becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007. The conforming changes become effective January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 1843

Short Title:	Revise Legislative Ethics Act - 1.	(Public)
Sponsors:	Representatives Hackney, Howard, Brubaker, Luebke (Primary Sponsors); Barnhart, Bell, Coates, Eddins, Fisher, Gibson, Harrison, Justice, Lucas, Martin, McLawhorn, Nye, Ross, Sauls, Setzer, Sherrill, Steen, West, Alexander, L. Allen, Bordsen, Dickson, Glazier, Hill, Insko, Jeffus, McGee, Moore, Stiller, Underhill, Weiss, and Wiley.	
Referred to:	Judiciary I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 120 of the General Statutes is repealed.

SECTION 2. Chapter 120 of the General Statutes is amended by adding a new article to read:

"Article 32.

"Legislative Ethics Act.

"Part 1. General Provisions.

"**§ 120-280. Title.**

This Article shall be known and may be cited as the 'Legislative Ethics Act.'

"**§ 120-281. Definitions.**

The following definitions apply in this Article:

(1) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(2) Business associate. – A partner, or member or manager of a limited liability

company.

(3) Business with which associated. – A business in which the legislator or any member of the legislator's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded or the fund's assets are widely diversified.

(4) Committee. – The Legislative Ethics Committee.

(5) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Article 163 of the General Statutes.

(6) Confidential information. – Information defined as confidential by statute.

(7) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(8) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(9) Extended family. – Spouse, descendant, ascendant, or sibling of the legislator or, descendant, ascendant, or sibling of the spouse of the legislator.

(10) Immediate family. – An unemancipated child of the legislator residing in the household, and the legislator's spouse, if not legally separated.

(11) Legislative action. – As the term is defined in G.S. 120-47.1.

(12) Legislative employee. – As the term is defined in G.S. 120-47.1.

(13) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(14) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee or independent contractor as of December 31 of the preceding year.

(15) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(16) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the legislator, the legislator's immediate family, or a business with which associated in an

aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the legislator, the legislator's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(17) Public event. – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

(18) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the legislator or a member of the legislator's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 120-282 through 120-285. [Reserved]**

"Part 2. Ethical Standards for Legislators.

"**§ 120-286. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the business associate, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(c) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(d) It shall be unethical for a legislator to contact the business associate, client, customer,

or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(e) A violation of subsection (a), (b), or (c) of this section is a Class F felony. A violation of subsection (d) of this section is not a crime but is punishable under G.S. 120-325.

"**§ 120-287. Use of public position for private gain.**

(a) A legislator shall not knowingly use the legislator's public position in any manner that will result in financial benefit, direct or indirect, to the legislator, a member of the legislator's extended family, or a person with whom, or business with which, the legislator is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a legislator that the legislator would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the legislator's ability to protect the public interest and perform the legislator's official duties would not be compromised.

(b) A legislator shall not mention or permit another person to mention the legislator's public position in nongovernmental advertising that advances the private interest of the legislator or others. The prohibition in this subsection shall not apply to political advertising, news stories or news articles.

"**§ 120-288. Disclosure of confidential information.**

No legislator shall use or disclose in any way confidential information gained in the course of the legislator's official activities or by reason of the legislator's official position that could result in financial gain for the legislator or any other person.

"**§ 120-289. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes.

"**§ 120-290. Gifts.**

(a) A legislator shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the legislator, or for another person, in return for being influenced in the discharge of the legislator's official responsibilities, other than that which is received by the legislator from the State for acting in the legislator's official capacity.

(b) No legislator or legislative employee shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31.

(c) Subsection (b) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the legislator or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the legislator or legislative employee for a meeting at which the legislator or

legislative employee participates in a panel or speaking engagement at the meeting related to the legislator's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, regional or national legislative organization of which the General Assembly, the legislator or legislative employee is a member by virtue of the person's legislative position.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(8) Gifts accepted on behalf of the State.

(9) Anything generally available or distributed to the general public or all other State employees.

(10) Anything for which fair market value is paid.

(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(14) Political contributions properly received and reported as required under Article 22A of Article 163 of the General Statutes.

(15) Gifts from the legislator's or the legislative employee's extended family, or a member of the same household of the legislator or the legislative employee, or gifts received in conjunction with a marriage, birth, adoption, or death.

(d) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and immediately donated to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed or provided for consumption among the entire staff or the public.

(e) A legislative employee shall not accept an honorarium from a source other than the General Assembly for conducting any activity where any of the following apply:

(1) The General Assembly reimburses the public servant for travel, subsistence, and registration expenses.

(2) The General Assembly's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the legislative employee's official duties.

An outside source may reimburse the General Assembly for actual expenses incurred by a legislative employee in conducting an activity within the duties of the legislative employee, or may pay a fee to the General Assembly, in lieu of an honorarium, for the services of the legislative employee.

(f) The offering, giving, soliciting or receiving a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 120-286, G.S. 14-217 or G.S. 14-218.

"**§ 120-291. Appearance of conflict.**

A legislator shall make reasonable efforts to avoid even the appearance of a conflict of interest in accordance with G.S. 120-292. An appearance of conflict exists when a reasonable

person would conclude from the circumstances that the legislator's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interest. An appearance of conflict could exist even in the absence of an actual conflict of interest.

"**§ 120-292. Other rules of conduct.**

(a) A legislator shall make a due and diligent effort before taking any action, including voting or participating in discussions with other legislators, to determine whether the legislator has a conflict of interest or an appearance of a conflict. If the legislator is unable to determine whether or not a conflict of interest or the appearance of a conflict may exist, the legislator has a duty to inquire of the Committee as to that conflict or appearance of conflict.

(b) A legislator shall continually monitor, evaluate, and manage the legislator's personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

(c) A legislator shall obey all other civil laws, administrative requirements and criminal statutes governing conduct of State government appointees and employees.

"**§ 120-293. Participation in legislative actions.**

(a) Notwithstanding any other law, except as permitted by subsection (c) of this section, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the legislator's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the legislator's participation in the legislative action. A potential benefit includes a detriment to (i) a business competitor of the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated.

(b) A legislator described in subsection (a) of this section shall abstain from participation in the legislative action. The legislator shall submit in writing the reasons for the abstention to the principal clerk of the house of which the legislator is a member.

(c) Notwithstanding subsection (a) of this section, a legislator may participate in a legislative action under any of the following circumstances:

(1) The only pecuniary or economic interest or reasonably foreseeable benefit that accrues to the legislator, the legislator's extended family, or business with which the legislator is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where a legislative action affects or would affect the legislator's compensation and allowances as a legislator.

(3) Before the legislator participated in the legislative action, the legislator requested and received a written advisory opinion from the Committee that authorized the participation. In authorizing the participation under this subsection, the Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) When action is ministerial only and does not require the exercise of discretion.

(5) When a legislative body records in its minutes that it cannot obtain a quorum in order to take the legislative action because legislators are disqualified from acting under this section.

"**§ 120-294. Employment of members of legislator's extended family.**

A legislator shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the legislator to a State or local office or position, except for positions at the General Assembly as permitted by the Legislative Services Commission.

"**§ 120-295 through 299. [Reserved]**

"Part 3. Legislative Ethics Committee.

"**§ 120-300. Legislative Ethics Committee established.**

There is established the Legislative Ethics Committee.

"**§ 120-301. Membership.**

(a) The Legislative Ethics Committee shall consist of ten members, five Senators appointed by the President Pro Tempore of the Senate, among them – two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and five members of the House of Representatives appointed by the Speaker of the House, among them – two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during each odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in each even-numbered year. However, a cochair may preside at any time during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

"**§ 120-302. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years. Appointees shall serve until the expiration of the appointee's then-current terms as members of the General Assembly.

(b) A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority that made the original appointment. The person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only.

"**§ 120-303. Quorum; expenses of members.**

(a) Six members constitute a quorum of the Committee. A vacancy on the Committee

does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties.

"**§ 120-304. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee may:

(1) Prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.

(2) Receive and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) Organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed the actual cost.

(4) Preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.

(5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior and to suggest rules of conduct that shall be adhered to by legislators and legislative staff.

(6) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(7) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(8) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(9) Upon receipt of information that a legislator owes money to the State and is delinquent in repaying the obligation, to investigate and dispose of the matter according to the terms of this Article.

(10) Receive and review all statements of economic interest filed with the Committee by prospective and actual legislators and evaluate whether (i) the statements conform to the law and the rules of the Committee, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(11) Render advisory opinions in accordance with G.S. 120-307.

(12) Investigate alleged violations in accordance with G.S. 120-306 and to hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(13) Initiate and maintain oversight of ethics educational programs for legislators and legislative employees consistent with G.S. 120-308.

(14) Adopt rules to implement this Article, including those establishing ethical standards and guidelines governing legislators and legislative employees in attending to and performing their duties.

(15) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

"**§ 120-305. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as sections to cover the executive branch of government. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules that the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government.

"**§ 120-306. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Committee, or upon the written request of any legislator, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-304.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) A complaint filed under this Article shall state the name, address, and telephone number of the person filing the complaint, the name of the legislator against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Article has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) The Committee may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(3) In addition to subdivision (2) of this subsection, the Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the

subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a copy of the complaint to the legislator who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. The Committee shall initiate an investigation of a complaint within 90 days of the filing of the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-307, or referral to appropriate law enforcement or other authorities pursuant to subsection (i)(2) of this section.

(e) Legislator Cooperation With Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under G.S. 120-325.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a legislator or (ii) the complaint does not allege facts sufficient to constitute a violation of this Article, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint, shall be public records.

(h) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant, the legislator, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Committee on a complaint may be held in closed session, but the decision of the Committee shall be announced in open session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation of this Article is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which shall include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may upon written request to the Committee have the matter referred as provided under subdivision (2)c. of this subsection.

(j) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(k) Findings and Record. – The Committee shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Committee investigations. In all matters in which the complaint is a public record, the Committee shall ensure that a complete record is made and preserved as a public record.

(l) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not a matter of public record, except as otherwise provided in this section.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

"**§ 120-307. Advisory opinions.**

(a) At the request of any legislator, the Committee may render advisory opinions on specific questions involving the meaning and application of this Article and the legislator's compliance with the requirements of this Article. The request shall be in writing, electronic or

otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Committee shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from a finding by the Committee of a violation of this Article.

(b) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(c) The Committee shall interpret this Article by rules, and these interpretations are binding on all legislators upon publication.

(d) The Committee shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 120-308. Ethics education program.**

The Committee shall develop and implement an ethics education and awareness program designed to instill in all legislators and legislative employees a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest. The Committee shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election or employment and shall offer periodic refresher presentations as the Committee deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Committee within three months of the person's election, appointment or employment in a manner as the Committee deems appropriate.

"**§ 120-309 through 314. [Reserved]**

"Part 4. Public Disclosure of Economic Interests.

"**§ 120-315. Purpose.**

The purpose of disclosure of the financial and personal interests by legislators is to assist legislators and those persons who elect them to identify and avoid conflicts of interest and potential conflicts of interest between the individual legislator's private interests and the legislator's public duties. It is critical to this process that current and prospective legislators examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the legislator's private interests and the legislator's public duties. Legislators must take an active, thorough and conscientious role in the disclosure and review process, including having a complete knowledge of how the legislator's public position or duties might impact the legislator's private interests. Legislators have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Article and to fully disclose any conflict of interest or potential conflict of interest between the legislator's public and private interests but the disclosure, review and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 120-316. Statement of economic interest; filing required.**

(a) Every legislator who is elected or appointed shall file a statement of economic interest with the Committee before the legislator's initial election or appointment and, except as otherwise filed under subsection (b) of this section, no later than March 15 every year thereafter. A prospective legislator required to file a statement under this Article shall not be appointed or receive a certificate of election, prior to submission by the Committee of the Committee's evaluation of the statement in accordance with this Article.

(b) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(c) The boards of elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(d) If a candidate for an office subject to this Article does not file the statement of economic interest within the time required by this Article, the county board of elections immediately shall notify the candidate by registered mail, restricted delivery to addressee only, that, if the statement is not received within 15 days, the candidate shall not be certified as the party nominee, or in the case of a candidate nominated by a new party under G.S. 163-98 that the candidate shall be decertified by the State Board of Elections. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. If the delinquent candidate was nominated by a new party under G.S. 163-98, the State Board of Elections shall decertify the candidate, and no county board of elections shall place the candidate's name on the general election ballot as nominee of the party. A vacancy thus created on a party's ticket shall be considered a vacancy for the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114.

(e) Every person appointed to fill a vacant seat in the General Assembly under G.S. 163-11 shall file with the Legislative Services Office and the county board of elections of each county in the senatorial or representative district a statement of economic interest as specified in this Article no later than 10 days after taking the oath of office. If a person required to file a statement of economic interest as required under this section fails to file the statement within the time required by this section, the Legislative Services Officer shall notify the person that the statement must be received within 15 days of notification. If the statement is not received within the time allowed in this subsection, then the Legislative Services Officer shall notify the Legislative Ethics Committee of the failure of the person to file the statement.

(f) The chair of the board of elections shall forward a certified copy of the statement of economic interest to the Committee for evaluation within 10 days of the date the statement of economic interest is filed with the board of elections.

(g) The Committee shall issue forms to be used for the statement of economic interest

and shall revise the forms from time to time as necessary to carry out the purposes of this Article. Except as otherwise set forth in this section, the Committee shall furnish the appropriate forms needed to comply with this Article to legislators.

"**§ 120-317. Statements of economic interest as public records.**

The statements of economic interest filed under this Article, and all other written evaluations by the Committee of those statements, shall be filed with the Legislative Services Office, made available in the Legislative Library, and be public records.

"**§ 120-318. Contents of statement.**

(a) Any statement of economic interest required to be filed under this Article shall be on a form prescribed by the Committee and sworn to by the person required to file. Answers must be provided to all questions. The form shall include the following information about the person and the person's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature, including legal, equitable, or beneficial interest, with a value of at least ten thousand dollars ($10,000) of the person, and that person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the person or the person's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the person and the person's spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each nonpublicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the person shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the person or a member of the person's immediate family is the beneficiary of a vested trust created, established, or controlled by the person, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the person, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The person shall make a good faith effort to list any individual or business entity with which the person, the person's extended family, or any business with which the person or a member of the person's

extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the person; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the person. For each individual or business entity listed under this subsection, the person shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the person is a practicing attorney, an indication of whether the person, or the law firm with which the person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedents' estates.
6. Insurance law.
7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the person or the person's immediate family has been associated or has an economic interest, indicating the time period of that association and the relationship with each business as an officer, employee, director, partner, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the date of the statement from sources other than the person's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of one hundred dollars ($100.00) received from any source having business with, or regulated by, the State.

n. A list of all bankruptcies filed during the preceding five years by the person, the person's spouse, or any entity in which the person, or the person's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the person or the person's immediate family is a member.

(3) Each statement of economic interest shall contain the person's sworn certification that the person has read the statement and that, to the best of the person's knowledge and belief, the statement is true, correct, and complete. The person's sworn certification also shall provide that the person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(4) If the person believes a potential for conflict exists, the person has a duty to inquire of the Committee as to that potential conflict.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was signed.

(c) The Committee shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Committee shall submit the evaluation to all of the following:

(1) The person who submitted the statement.

(2) The Legislative Services Office.

"**§ 120-319. Failure to file.**

(a) In addition to the provision of G.S. 120-316, within 30 days after the date due in accordance with G.S. 120-316, for every person from whom a statement of economic interest has not been received by the Committee, or whose statement of economic interest has been received by the Committee but deemed by the Committee to be incomplete, the Committee shall notify the person of the failure to file or complete and shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the person shall be subject to a fine under this section.

(b) Any person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Committee.

(c) Failure by any person to file or complete a statement of economic interest within 60 days of the receipt of the notice required under subsection (a) of this section shall be deemed to be a violation of this Article and shall be grounds for disciplinary action under G.S. 120-325.

"**§ 120-320. Concealing or failing to disclose material information.**

A person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 2 misdemeanor and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-321. Penalty for false or misleading information.**

A person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class F felon and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-322 through 324. [Reserved]**

"Part 5. Violation Consequences.

"**§ 120-325. Violation consequences.**

(a) Violation of this Article by any legislator or legislative employee is grounds for disciplinary action. Except as specifically provided in this Article or for perjury under G.S. 120-306 and G.S. 120-318, no criminal penalty shall attach for any violation of this Article.

(b) The willful failure of any legislator to comply with this Article shall be deemed a violation of this Article for purposes of G.S. 120-306.

(c) Nothing in this Article affects the power of the State to prosecute any person for any violation of the criminal law.

(d) The Legislative Ethics Committee may seek to enjoin violations of G.S. 120-288."

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. Section 1 of this Act becomes effective January 1, 2007. The remainder of this act becomes effective October 1, 2006, and applies to persons holding office and employed on or after January 1, 2007, and acts and conflicts of interest that arise on or after January 1, 2007.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7 — 7/12/06 9:00 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Celia Cox	OSBM
Ryan Pressley	Rep. Glazier
Gary McLeod	NC AGO
Ashley Ray	NC AGO
JERRY RATLEY	SBI / AGO
Bruce Wayne	Gotham City
Kevin Leonard	NCSR
Dan Stein	Justice Initiatives
TROY PAGE	N.C. SENTENCING COMMISSION
Mark Osborne	AOC
James Andrews	NC State AFL-CIO
John Harding	NIBL/FB

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7/12/06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
George Seddalls	NCBOU
Meredith Bishop	NCAGO
Garrett Artz	NC AGO
Kathleen Edwards	UNC-CH Daily Tar Heel
Tim Moose	DOC-DCC
Lee Hodge	KCLH
Caroline Howe	Lt. Gov's Office
Perry Newson	Bd of Ethics
Leigh Taylor	" "
Mildred Spearman	NCDOC
Joel Brown	NCSOS

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
CASANDRA WHITE	NCCCPS
[illegible]	CAPA
[illegible]	NCAJL
Al Ripley	NC Justice Ctr.
AA VANORE	GOV'S OFFICE
Rob Schofield	NCCNP
JOYCE POPE	civitas institute
[illegible]	GSK

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 13, 2006	10 Minutes. after session	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke

Senator Daniel G. Clodfelter, Chair

Minutes
Senate Judiciary I Committee
July 13, 2006
Room 1027, Legislative Building
Senator Daniel G. Clodfelter, Presiding
1:00 P.M.

The Senate Judiciary Committee met on Thursday, July 13, 2006 in Room 1027 at 5:00 p.m. in the Legislative Building. Senator Daniel G. Clodfelter, Chairman presided.

Senator Clodfelter informed the Committee that the discussion today would about the new ***Proposed Committee Substitute to House Bill 1843: State Government Act – 1.*** Chairman Clodfelter also asked that the Committee review this information over the weekend.

Representative Richard Stevens moved that the Proposed Committee Substitute be adopted and three separate bills from the House be incorporated into one Bill. ***The motion was carried.***

Chairman Clodfelter recognized Mr. Walter Regan to give a review of the following changes:

"§138A-22. Page 19, Line 27. Statement of Economic Interest; filing required. Please see Page 19, Line 27 for detailed information.

"§138A-24. Page 19, Lines 41 and 42 (c), under Statement of Economic Interest. Please see attached detailed information.

"§138A-33. Page 27, Line 4. Other Compensation. Please see attached detailed information

Summary: Part III of the Proposed Committee Substitute for House Bill number 1843 amends North Carolina's lobbying laws to do all of the following;

1) Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists and lobbyists from certain appointments and other activities, and resulting criminal penalties for violations.

2) Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).

3) Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.

4) Requires reporting of certain campaign contributions by registered lobbyists and lobbyist's principals.
5) Permits the issuance of advisory opinions and requires lobbying education programs.

For further details of the information above, please refer to the attached House Bill 1843: Part III. Amend Lobbying Summary provided by R. Erika Churchill, Committee Counsel (Attachment Number 1).

Chairman Clodfelter stated that the next meeting will held on Monday, July 17, 2006 at 5:00 P.M.

There being no further business, the meeting was adjourned.

Respectfully Submitted By,

Senator Daniel G. Clodfelter, Chairman

Daladier C. Miller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06
Third Edition Engrossed 5/18/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1843-CSRU-104 [v.19]

7/17/2006 4:36:35 PM

Short Title: State Government Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, TO AMEND THE LOBBYING LAWS, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT.

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

"**Chapter 138A.**

"**State Government Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'State Government Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in

carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted shall not be used to advance narrow interests for oneself or others. Self-interest, partiality, and prejudice have no place in decision making for the public good. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, except for those public bodies that have only advisory authority, as determined and designated by the Commission.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business in which the person or any member of the person's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated

investment company, or pension or deferred compensation plan, if all of the following apply:

a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(7) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(8) Confidential information. – Information defined as confidential by the General Statutes.

(9) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(10) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(11) Covered person. – A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.

(12) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(13) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For judicial employees, it is the Chief Justice.

(14) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal ascendant, spouse's lineal descendant, spouse's sibling, and the spouse of any of these persons.

(15) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.

(16) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, or a person described under G.S. 138A-32(d)(1), (2) or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.
b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.
c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
d. Academic or athletic scholarships made on terms not more favorable than scholarships generally available to the public.
e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
f. Anything of value given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and not made for the purpose of lobbying.

(17) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(18) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(19) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(20) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.

(21) Legislative action. – As the term is defined in G.S. 120C-100.

(22) Legislative employee. – As the term is defined in G.S. 120C-100.

(23) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(24) Lobbying. – As the term is defined in G.S. 120C-100.

(25) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate

family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.

(26) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(27) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(28) Pecuniary interest. – Any of the following:

a. Owning a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving during the preceding calendar year, compensation that is or will be required to be included as taxable income on federal income tax returns of the person, the person's immediate family, or a business with which the person is associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the person, the person's immediate family, or a business with which associated.

c. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received or the amount of the interest owned.

(29) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(30) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.

(31) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which all legislators or legislative employees are invited to attend.

b. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which a legislator or legislative employee is invited to attend along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, or a legislative caucus.

c. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a joint committee, or a legislative caucus and to which all stockholders, employees, board members, officers, members, or subscribers of the person are notified and invited to attend.

d. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which at least 10 public servants are invited to attend.

e. An organized gathering of a governmental body subject to the open meetings law and to which at least 10 public servants are invited to attend.

f. An organized gathering of a person to which at least 10 public servants are invited to attend and to which all stockholders, employees, board members, officers, members, or subscribers of the person are notified and invited to attend.

(32) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. Judicial employees.

i. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina,

the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

k. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

l. Members of the Commission.

m. Persons under contract with the State working in or against a position included under this subdivision.

(33) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"State Ethics Commission.

"**§ 138A-6. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-7. Membership.**

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom may be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(3) Two members appointed by the Governor shall serve initial terms of three years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable.

"**§ 138A-8. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Five members of the Commission constitute a quorum.

"**§ 138A-9. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-10. Powers and duties.**

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies and procedures to accomplish the purposes of the Chapter.

(3) Identify and publish the names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(5) Receive and refer complaints of violations against judicial officers and legislators in accordance with G.S. 138A-12.

(6) Investigate alleged violations against public servants in accordance with G.S. 138A-12.

(7) Render advisory opinions in accordance with G.S. 138A-13.

(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants and legislative employees in attending to and performing their duties.

(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(g), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(i), the number of complaints referred for appropriate action under G.S. 138A-12(i) or G.S. 138A-12(l)(3), and the number of complaints pending action by the Commission.

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

"**§ 138A-11. Identify and publish names of covered persons and legislative employees.**

The Commission shall identify and publish at least quarterly, a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. This listing may be published electronically on a public internet website maintained by the Commission.

"**§ 138A-12. Investigations by the Commission.**

(a) Jurisdiction. – The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall investigate complaints alleging unethical conduct by covered persons and legislative employees as set forth in this section.

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-10.

(3) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.

(4) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.

(5) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. –

(1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within one year of the date the

complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer or investigate any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the covered person who is the subject of the complaint within 30 days of the filing.

(d) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate investigations upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(e) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters concerning covered persons or legislative employees other than complaints properly before the Commission under subsection (b) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-13, or referral to appropriate law enforcement or other authorities pursuant to subdivision (l)(1) of this section.

(f) Covered Person and Legislative Employees Cooperation with Investigation. – Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(g) Dismissal of Complaint after Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint.

(h) Commission Investigations. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the investigation and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(i) Action on Investigations. – The Commission shall investigate complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

(1) For public servants and legislative employees, decide to proceed with a hearing under subsection (j) or this section.

(2) For legislators, refer the complaint to the Committee.

(3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, or to the senior resident superior court judge of the district or county for complaints against district attorneys and clerks of court.

(j) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints received against a public servant or legislative employee. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant or legislative employee requests a hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, and the public servant or legislative employee. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) The Commission shall make available to the public servant or legislative employee prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.

(4) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the public servant or legislative employee requests that the hearing be held in open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The public servant or legislative employee being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(k) Settlement of Investigations. – The public servant or legislative employee who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(l) Disposition of Investigations. – Except as permitted under subsection (g) and (i) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant or legislative employee and notify the employing entity, if applicable.

b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.

d. Refer the matter for appropriate action to the Chief Justice for judicial employees.

e. Refer the matter to the Principal Clerks of the House and Senate of the General Assembly for constitutional officers of the State.

f. Refer the matter to the Legislative Services Commission for legislative employees.

(m) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior

court judge of the district or county for complaints against district attorneys and clerks of court.

(n) Findings and Record. – The Commission shall render a written report of a violation of this Chapter made pursuant to complaints or the Commission's investigation. When a matter is referred under subsection (i) or (l) of this section, the Commission's report shall include detailed results of its investigation in support of the Commission's finding of a violation of this Chapter.

(o) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an investigation under this section shall be confidential and not matters of public record, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes sanctions. At such time as sanctions are imposed on a covered person or legislative employee, the complaint, response and Commission's report to the employing entity shall be made public.

(p) Recommendations of Sanctions. – After referring a matter under subsection (l) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's or legislative employee's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servant or legislative employee as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's or legislative employee's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant or legislative employee knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant or legislative employee has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(c).

(9) The public servant's or legislative employee's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission

may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant or legislative employee, including removal of the public servant or legislative employee from the public servant's or legislative employee's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(q) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entity to discipline the covered person or legislative employee.

(r) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to continue to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a public servant or legislative employee ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

(s) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(t) Reports. – The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(11).

(u) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission.

"**§ 138A-13. Advisory opinions.**

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except as set forth in subsection (b) of this section, reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from both of the following:

(1) Investigation by the Commission.
(2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except provided in this subsection, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

(1) Investigation by the Committee.
(2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. The immunity granted under this subsection shall not apply if the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(d) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all covered persons and legislative employees upon publication.

(e) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not public records.

(g) This section shall not apply to judicial officers.

"**§ 138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons, except judicial officers, and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant, shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection,

appointment or employment and shall offer periodic refresher presentations as the Commission deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission within three months of the person's election, reelection, appointment, or employment in a manner as the Commission deems appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered person and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

(i) This section shall not apply to judicial officers.

"**§ 138A-15. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(c) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the

attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-16 through 20. [Reserved]**

"Article 3.

"Public Disclosure of Economic Interests.

"**§ 138A-21. Purpose.**

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-22. Statement of economic interest; filing required.**

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(32)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (c) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under

G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of all candidates who have filed as candidates for offices as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Election under this section.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other covered persons the appropriate forms needed to comply with this Article.

"**§ 138A-23. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"**§ 138A-24. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and by the filing person's immediate family:

(1) The name, home address, occupation, employer, and business of the person.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person, and the filing person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's spouse, including descriptions adequate to determine the location by city and county of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company.

f. The name of each non-publicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, a list any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

h. For any company or business entity listed under sub-subdivisions f. and g. of this subdivision, list any company or business entity that has any material business dealings, contracts, or other involvement with the State, including a brief description of the business activity.

i. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

j. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.

k. A list of each source (not specific amounts) of income received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains and business income.

l. A list of all non-publicly owned businesses of which the person is an officer, employee, director, business associate, or owner. The list also shall indicate whether each non-publicly owned

business does business with or is regulated by the State, and the nature of the business done with the State.

m. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, and a brief description of the nature of the business.

n. An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This sub-subdivision does not apply to a legislator or a judicial officer.

o. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the reporting period under subsection (b) of this section from sources other than the person's extended family. The list required by this sub-subdivision shall not apply to gifts received by the filing person prior to the time the person filed as a candidate for office, as defined G.S. 138A-22, or was appointed or employed as a covered person.

(3) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty.
c. Corporate law.
d. Criminal law.
e. Decedents' estates.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation.
k. Real property law.
l. Securities law.

m. Taxation.
n. Utilities regulation.

(4) Except as provided under subdivision (3) of this section, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of clients described by type of business and the nature of services rendered, for which payment for services were charged or paid during any single year of the past five years in excess of ten thousand dollars ($10,000).

(5) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.

(6) A list of any felony convictions of the filing person.

(7) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) The Supreme Court, Legislative Ethics Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall subject to the provisions of G.S. 138A-25.

(c) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(e) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.

(2) The head of the agency in which the filing person serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The Chief Justice for judicial officers and judicial employees.

(5) The appointing or hiring authority for those public servants not under the Governor's authority.

(6) The State Board of Elections for those filing persons who are elected.

"**§ 138A-25. Failure to file.**

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-26. Concealing or failing to disclose material information.**

A filing person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-27. Penalty for false or misleading information.**

A filing person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading is guilty of a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-28 through 30. [Reserved]**

"Article 4.

"Ethical Standards for Covered Persons.

"**§ 138A-31. Use of public position for private gain.**

(a) A covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in any manner that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or a person

with whom, or business with which, the covered person or legislative employee is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a director or biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. §501(c)(3). Disclosure of a covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier or client.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, or the Internet, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fundraising on behalf of and aired on public radio or public television.

"**§ 138A-32. Gifts.**

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal as defined in G.S. 120C-100.

(d) No public servant shall knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events where the meals and beverages are generally provided to other attendees.

(2) Lodging, transportation, entertainment and recreation provided in connection with a public event by a chamber of commerce qualifying under 26 U.S.C. §501(c)(6) to which all legislators are invited when all the things of monetary value are provided within the geographic area represented by the chamber of commerce.

(3) Informational materials relevant to the duties of the covered person, or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person or legislative employee for a meeting at which the covered person or legislative employee participates in a panel or speaking engagement at the meeting related to the covered person's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement. Reasonable travel expenses necessary to attend the meeting and payments for registration and lodging for the 24-hour time periods may be paid in advance. Nothing in this subdivision shall prevent a covered person or legislative employee from arriving before or staying beyond the 24-hour time period at his or her own expense.

(5) Entertainment or recreation provided in connection with a public event sponsored by a charitable organization as defined under G.S. 1-539.11.

(6) Items, services and entertainment received by a public servant in connection with a state, national, or regional organization in which the person's agency is a member or the public servant is a member by virtue of the person's public position, provided the items, services, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(7) Items, services and entertainment received by a legislator or legislative employee in connection with a state, regional, or national legislative organization of which the General Assembly is a member or the legislator or legislative employee is a member by virtue of the person's

legislative position, provided the items, services, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(8) Items, services, and entertainment received in connection with an educational conference or meeting, provided the items, services, or entertainment are made available to other attendees and the entertainment is incidental to the principal agenda of the conference or meeting.

(9) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(10) Gifts accepted on behalf of the State for the benefit of the State.

(11) Anything generally made available or distributed to the general public or all other State employees, by lobbyists or lobbyist's principals.

(12) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.

(13) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is meals and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible gift, other than meals or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.

(14) Gifts of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission,

and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed, or provided for consumption among the members and staff of the employing entity or the public.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a thing of value for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, G.S. 14-218, or G.S. 120-86.

"**§ 138A-33. Other compensation.**

A public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties.

"**§ 138A-34. Use of information for private gain.**

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employees extended family, or a person with whom or business with which the public servant or legislative employee is associated. A public servant or

legislative employee shall not improperly use or disclose any confidential information not a public record.

"**§ 138A-35. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"**§ 138A-36. Public servant participation in official actions.**

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

"**§ 138A-37. Legislator participation in official actions.**

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or may reasonably and foreseeably benefit from the action, if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual pecuniary or economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104.

"**§ 138A-38. Permitted participation exception.**

Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) Where an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the

Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subsection, the Commission shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies, in writing, the Commission that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

"**§ 138A-39. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-40. Employment and supervision of members of covered person's extended family.**

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public

servant's extended family, except as specifically authorized by the public servant's employing entity.

"**§ 138A-41. Other ethics standards.**

Nothing in this Chapter shall prevent the Supreme Court, the Legislative Ethics Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in Article 3 of this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly made either by the House or upon the recommendation of the Speaker of the House, the Speaker of the House may remove the offending public servant. For appointees of the General Assembly made either by the Senate or upon the recommendation of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State, employees of the Judicial Department and or legislative employees, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make all final decisions on the matter in which the offending legislative employee shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The State Ethics Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2. G.S. 150B-21.1(a) is amended by adding a new subdivision to read:

"(17) The need for the State Ethics Commission to interpret and implement the ethical standards for covered persons as provided in Article 4 of Chapter 138A of the General Statutes."

PART II. AMEND LEGISLATIVE ETHICS ACT.

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. G.S. 120-85, G.S. 120-87(b), G.S. 120-88 and Part II of Article 14 of Chapter 120 of the General Statutes are repealed.

SECTION 5. Part 1 of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-85.1. Definitions.**

As used in this Article, the following terms mean:

(1) Business with which associated. – As defined in G.S. 138A-3.

(2) Confidential information. – As defined in G.S. 138A-3.

(3) Economic interest. – As defined in G.S. 138A-3.

(4) Immediate family. – As defined in G.S. 138A-3.

(5) Legislator. – A member or presiding officer of the Genera Assembly.

(6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.

(7) Vested trust. – As defined in G.S. 138A-3."

SECTION 6. G.S. 120-86 reads as rewritten;

"**§ 120-86. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate ~~household,~~family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

~~(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under ~~G.S. 120-103.~~G.S. 120-103.1."

SECTION 7. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ twelve members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 8. G.S. 120-99(c) is repealed.

SECTION 9. G.S. 120-101 reads as rewritten:

"**§ 120-101. Quorum; expenses of members.**

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 10. G.S. 120-102 reads as rewritten:

"**§ 120-102. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~may:

~~(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~

~~(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~

~~(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~

~~(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.~~

(5) ~~To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.~~Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) ~~To advise~~Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) ~~To propose~~Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt rules to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 11. G.S. 120-103 is repealed.

SECTION 12. Part III of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-103.1. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section, initiate an investigation of a complaint or dismiss the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee may:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint after Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsection (g) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (c) of this section, the complaint, response, records and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members."

SECTION 13. G.S 120-104 reads as rewritten:

"**§ 120-104. Advisory opinions.**

(a) At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. ~~These~~

~~advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall accept and review advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13. The Committee may modify or overrule the advisory opinions issued to legislators by the State Ethics Commission and the opinion of the Committee shall control. The Committee shall provide the Commission with the advisory opinion modified or overruled by the Committee, and the Commission shall publish the Committee's opinion under G.S. 138A-13(e). The failure of the Committee to modify or overrule an advisory opinion issued to a legislator by the State Ethics Commission shall constitute ratification of the State Ethics Commission's advisory opinion for purposes of the immunity granted under G.S. 138A-13(a).

(c) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(d) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators by rules, and these interpretations are binding on all legislators upon publication.

(e) The Committee shall publish its advisory opinions issued separately from the State Ethics Commission at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (e) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission, are confidential and not matters of public record."

SECTION 14. G.S. 120-105 reads as rewritten:

"**§ 120-105. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as ~~sections to cover the administrative branch of government and~~ Chapter 138A of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 15. G.S. 143B-350, reads as rewritten:

"**§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

...

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in

the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary.~~the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall:~~shall include

~~(1)~~ ~~Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's

position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

~~(2) Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~(3) Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in ~~nature~~ nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, ~~the North Carolina Board of Ethics,~~ the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

...."

PART III. AMEND LOBBYING LAWS.

SECTION 16.(a) G.S. 120-47.7C as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 16.(b) G.S. 120-47.7C as enacted by Section 1(a) of this act reads as rewritten:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly or member of the Council of State may be employed as ~~an executive or~~ a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within six months ~~after the end of that member's service in the General Assembly.~~after the end of the term to which the member was elected or appointed.

(b) No person serving as ~~Governor, as a member of the Council of State, or as~~ a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or~~ a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one ~~after~~year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General ~~Assembly.~~Assembly or Council of State.

(d) A legislative ~~or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative ~~or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, ~~executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 16.(c) G.S. 120-47.7C as enacted by this act is repealed effective January 1, 2007.

SECTION 17.(a) G.S. 120-47.7B as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 17.(b) G.S. 120-47.7B as enacted by this act is repealed effective January 1, 2007.

SECTION 18.(a) Article 9A of Chapter 120 of the General Statutes is repealed.

SECTION 18.(b) The General Statutes are amended by adding a new Chapter to read:

"**Chapter 120C.**

"**Lobbying.**

"Article 1.

"General Provisions.

"**§ 120C-100. Definitions.**

(a) As used in this Article, the following terms mean:

(1) Designated individual. – A legislator, legislative employee, or public servant.

(2) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person or another person on that person's behalf with respect to any of the following:

1. Applying for a permit, license, determination of eligibility, or certification.

2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.

3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.

c. Internal administrative functions, including those functions exempted from the definition of 'rule' in G.S. 150B-2(8a).

d. Ministerial functions.

e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting or submitted as written comment, on a proposed executive action in response to a request for public comment, provided identity of the person on whose behalf the comments are made is disclosed as part of the public participation and no reportable expenditure is made.

(3) In session. – One of the following:

a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

(4) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill,

resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(5) Legislative employee. – Employees and officers of the General Assembly.

(6) Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.

(7) Legislator. – A member or presiding officer of the General Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(8) Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications, activities, or monies spent as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(9) Lobbyist. – An individual who engages in lobbying and meets any of the following criteria:

a. Is employed by a person for the intended purpose of lobbying.

b. Is employed by a person and a significant part of that individual's duties include lobbying. For purposes of this sub-subdivision, a significant part of an individual's duties is deemed to be any portion of more than five calendar days in a calendar year.

c. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.

d. Contracts for economic consideration for the purpose of lobbying.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700.

(10) Lobbyist principal and principal. – The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

(11) News medium. – Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(12) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.

b. A contract, agreement, promise or other obligation whether or not legally enforceable.

(13) Solicitation of others. – The petition or request of the general public to influence legislative or executive action, or both by a lobbyist, lobbyists' principal or other person, except communication between the lobbyist, lobbyist's principal or other person and the lobbyist's principal's or other person's stockholders, employees, board members, officers, members, subscribers, or other persons who have affirmatively assented to receive the lobbyist's principal's or other person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter.

"**§ 120C-101. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated

that commitment or decision to the State or local government agency involved with the project.

"**§ 120C-102. Advisory opinions.**

(a) At the request of any person affected by this Chapter, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120C-103. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Secretary of State shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Secretary of State deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Secretary of State within six months of the person's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Secretary of State deems appropriate. Upon request, the Secretary of State shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary of State shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary of State shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made

available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals, upon request.

"Article 2.

"Registration.

"**§ 120C-200. Lobbyist registration procedure.**

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Chapter within one business day of engaging in any lobbying as defined by G.S. 120C-100(8).

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120C-201. Lobbyist's registration fee.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted non-profit status under 26 U.S.C. 501(c)(3).

"**§ 120C-202-205. Reserved for future codification.**

"**§ 120C-206. Lobbyist's principal's authorization.**

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

"§ 120C-207. Lobbyist's principal's fees.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist's principals that have been granted non-profit status under 26 U.S.C. 501(c)(3).

"§ 120C-208-210. Reserved for future codification.

"§ 120C-215. Other persons required to register.

(a) A person incurring an expense for solicitation of others as defined in G.S. 120C-100(14) shall register and report under this Chapter when the expense is one of the following:

(1) Media costs exceeding a total of one thousand dollars ($1000) during any 90-day period.

(2) Mailing costs exceeding a total five hundred dollars ($500.00) during any 90-day day period.

(3) Conferences, meetings, or other similar events exceeding a total of five hundred dollars ($500.00) during any 90-day period.

(b) A person required to register and report under this section shall be referred to as a 'solicitor' for purposes of this Chapter.

"§ 120C-216-219. Reserved for future codification.

"§ 120C-220. Publication and availability of registrations.

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically.

"Article 3.

"Prohibitions and Restrictions.

"§ 120C-300. Contingency fees prohibited.

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

"**§ 120C-301. Election influence prohibited.**

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

"**§ 120C-302. Campaign contributions prohibition.**

No lobbyist or lobbyist's principal may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(32)a.

"**§ 120C-303. Gifts by lobbyists and lobbyist's principals prohibited.**

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a designated individual.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, G.S. 14-218, or G.S. 120-86, but shall be subject to civil fines under G.S. 120C-601(b).

"**§ 120C-304. Restrictions.**

(a) No legislator or former legislator and no public servant or former public servant as defined in G.S. 138A-3(32)a. may register as a lobbyist under this Chapter within six months after the end of the term to which the member was elected or appointed.

(b) No person serving as a public servant as defined in G.S. 138A-3(32)c. may register as a lobbyist under this Chapter within one year after separation from employment or leaving office.

(c) No individual registered as a lobbyist under this Chapter shall serve as a campaign treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(d) A lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State within 60 days after the expiration of the lobbyist's registration. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) Any appointment or registration made in violation of this section shall be void.

"**§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure.

"Article 4.

"Reporting.

"**§ 120C-400. Reporting of reportable expenditures.**

For purposes of this Chapter, all reportable expenditures as defined in G.S. 120C-100(12) made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that person's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Reportable expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Reportable expenditures for gifts exempted by Article 3 of this Chapter.

"**§ 120C-401. Reporting generally.**

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) Each report shall set forth the fair market value or face value if shown, date, a description of the reportable expenditure, name and address of the payee, or beneficiary, and name of any designated individual, or that person's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General

Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(c) Reportable expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports,.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist's principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist's principal, or other person required to register under this Chapter. No lobbyist, lobbyist's principal, or other person required to register under this Chapter may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist's principal, or other person required to report under this Chapter for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

"**§ 120C-402. Lobbyist's reports.**

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall include all of the following:

(1) All reportable expenditures during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report while the General Assembly is in special or regular session. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-403. Lobbyist's principal's reports.**

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following:

(1) All reportable expenditures during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

(3) Compensation paid to all lobbyists during the reporting period. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(4) Reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report while the General Assembly is in special or regular session. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-404. Solicitor's reports.**

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:

(1) All reportable expenditures during the reporting period.
(2) Solicitation of others when such solicitation involves:
a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.
b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.
c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

"**§ 120C-405. Report availability.**

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes.

"Article 5.

"Liaison Personnel.

"**§ 120C-500. Liaison personnel.**

(a) All agencies and officers in the executive branch, including all public servants as defined in G.S. 138A-3(32)a., c., i., j., and k., boards, commissions, departments, divisions, councils, and other units of government in the executive branch, except local units of government, shall designate liaison personnel to lobby legislators and legislative employees. No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(b) No more than two persons may be designated as liaison personnel for each agency or officer in the executive branch, including all public servants as defined in G.S. 138A-3(32)a., c., i., j., and k., boards, commissions, departments, divisions, councils, and other units of government in the executive branch.

"**§ 120C-501. Applicability of chapter on liaison personnel.**

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) The registration under G.S. 120C-200 shall apply to liaison personnel.

(c) The agency or officer in the executive branch, including all public servants as defined in G.S. 138A-3(32)a., c., i., j., and k., boards, commissions, departments, divisions, councils, and other units of government in the executive branch, shall complete the reports required by G.S. 120C-401.

"Article 6.

"Violations and Enforcement.

"**§ 120C-600. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under

this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120C-601. Punishment for violation.**

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of this Chapter up to five thousand dollars ($5,000) per violation.

"**§ 120C-602. Enforcement by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Chapter and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the Attorney General for investigation. Any portion of the complaint not involving alleged violations of this Chapter by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(c) Complaints of violations of this Chapter involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Chapter.

"Article 7.

"Exemptions.

"**§ 120C-700. Persons exempted from this Chapter.**

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

(4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes, or is an employee of any news medium while engaged in the acquisition or dissemination of news on behalf of that news medium.

(6) Designated individuals while acting in their official capacity.

(7) A person responding to inquiries from a designated individual and who engages in no further activities as a lobbyist in connection with that inquiry.

"Article 8.

"Miscellaneous.

"**§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.**

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report using available information.

(c) If a designated individual accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not

covered by this Chapter, the person, or group of persons, ~~granting the~~ scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from an extended family member to a designated individual.

(3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the reportable expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

SECTION 19. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 20. G.S. 120-86.1 reads as rewritten:

"**§ 120-86.1. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in ~~G.S. 120-47.1(4),~~ G.S. 120C-100(4), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

SECTION 21. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~ under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120C-100(10) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~under Chapter 120C of the General Statutes.

SECTION 22. Effective September 1, 2008, The Revisor of Statutes shall change the term "Secretary of State" to "State Ethics Commission" wherever it appears in Chapter 120C of the General Statutes. Effective September 1, 2008, all personnel and associated funding of those personnel employed with the Secretary of State with respect to Chapter 120C of the General Statutes shall be transferred to the State Ethics Commission.

SECTION 23. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 24. Notwithstanding Page L-3, Item 18, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated in Section 2.1 of S.L. 2006-66 to a Statewide reserve for pending ethics legislation shall be used to establish up to five new positions in the Department of Administration for the North Carolina Board of Ethics to implement this act.

SECTION 25.(a) Persons holding covered positions on January 1, 2007 shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 25.(b) Public servants holding positions on January 1, 2007 shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 26. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid. If G.S. 120C-302 as enacted by Section 19 of this act is declared unconstitutional or invalid by the courts, it shall be repealed.

SECTION 27. Sections 4 through 15 and Sections 18 through 22 of this act become effective January 1, 2007, and G.S. 120C-304 as enacted by Section 18 of this act applies to appointments made on or after that date. Sections 16, 17, 26, and 27 of this act are effective when the act becomes law and apply to offenses committed on or after that date. G.S. 120-47.7C (d), as enacted in Section 16 of this act applies to appointments made on or after that date. The remainder of this act becomes effective October 1, 2006, applies to covered persons and legislative employees on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 1843:
State Government Ethics Act - 1

BILL ANALYSIS

Committee:	House Judiciary I	**Date:**	July 20, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, Luebke	**Summary by:**	Walker Reagan and Erika Churchill, Committee Counsel
Version:	Sixth Edition		

SUMMARY: ***House Bill 1843 creates an independent ethics commission to oversee the administration of certain ethics laws that apply to the executive branch, the legislative branch, and the judicial branch. The bill codifies Executive Order No. One, modifies the existing Legislative Ethics Act, substantially conforms ethics laws applying to legislators to those applicable to the executive branch, and requires judicial officials to file statements of economic interest with the independent commission and be subject to investigations for ethics violations. Part III of the bill amends the lobbying laws as follows:***

1. ***Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).***
2. ***Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.***
3. ***Prohibits campaign contributions and bundling by registered lobbyists and lobbyist's principals.***
4. ***Permits the issuance of advisory opinions and requires lobbying education programs.***

CURRENT LAW:

Executive Branch. - Ethics in the executive branch is primarily regulated by Executive Order No. One (Order) issued by the Governor. Under the Governor's limited authority, the Governor has made the order applicable to appointees of the Governor, and offered the services of the State Ethics Board (created by the Order) to members of the Council of State, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors. The Order requires covered officials to file statements of economic interests (SEI) annually, establishes rules of conduct for covered officials, authorizes the Board to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. Enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority. Records of the Board are public, including SEI filed by perspective appointees prior to their appointment. False statements made on SEI are not subject to the penalty of perjury. The Governor has no authority to require other constitutional officers of the State to participate under the Order or make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

Legislative Branch. - The current Legislative Ethics Act, enacted in 1975, consists of three Parts. Part 1 is the Code of Legislative Ethics that defines certain conduct involving legislators that would be either criminal or unethical conduct and conflicts of interest for legislators. Part 2 governs legislator's SEI Part 3 establishes the Legislative Ethics Committee and defines the powers and authority of the Committee for overseeing the SEI process, issuing ethics advisory opinions, and conducting investigations of alleged unethical conduct.

Judicial Branch. - Article IV of the Constitution establishes the Judicial Branch to include all justices and judges of the General Court of Justice, magistrates, clerks of court, district attorneys and the Administrative Office of the Courts. The responsibility for ethics in the judicial branch is given to the NC Supreme Court which has authority to prescribe standards of judicial conduct in the Code of Judicial Conduct. The Judicial Standards Commission, made up of judges, private attorneys, and non-lawyer private citizens, is established to receive and investigate complaints of judicial misconduct, and report to the Supreme Court for disciplinary action, including censure or remove a judge for certain judicial misconduct.

Lobbying Law - A person paid to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

BILL ANALYSIS: The Senate Committee Substitute for House Bill 1843 does the following:

ARTICLE 1 sets out the purpose of the Act and the applicable definitions.

G.S. 138A-3 sets out the following definitions used in the Chapter:

Board - Any non-advisory State branch board, commission, council, committee, task force, authority, or similar body created by statute or executive order.

Covered Person – Legislator, public servant (defined below), justices, judges, district attorneys, and clerks of court,

Extended Family – Spouse, lineal descendants and ascendants, sibling, and spouse of the covered person, and lineal descendants and ascendants, and sibling of the spouse of the covered person, and the spouse of these persons.

Gift – Anything of monetary value given or received without valuable considerations by or from a lobbyist or lobbyist principal, or other defined person doing business with a specific State agency. Excluded from the definition of a gift are things for which fair market value or face value is paid, normal commercial loans and business relationships, not for the purpose of lobbying, normal academic and athletic scholarships, lawful campaign contributions, and things given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to public service and not for the purpose of lobbying.

Judicial employees – The director and assistant director of the Administrative Office of the Courts and any other person designated by the Chief Justice earning more than $60,000 per year from the State.

Public event – An organized gathering of individuals open to the general public or to which at least 10 other persons, not the covered public official, or all persons associated with the sponsor in a specific office or county, are invited to attend, and to which at least ten public servants or a recognized group of legislators are invited to attend.

Public servants – All Council of State members, heads of all principal State departments, chief deputies and administrative assistants, confidential assistants and secretaries, employees of the Office of the Governor, persons designated as exempt from the State Personnel Act by the Governor, Council of State or department heads, judicial employees, voting members of all boards (defined) whether appointed by the executive, legislative, or judicial branch, the UNC Board of Governors, the UNC president and vice-presidents, chancellors, vice-chancellors, members of UNC boards of trustees, members of the State Board of Community Colleges, President and chief financial officer of the Community College System, presidents, chief financial officers and trustees of local community colleges, and contract employees filling any of these positions.

ARTICLE 2 establishes the State Ethics Commission as an independent, bipartisan commission of eight members, 4 appointed by the Governor, of which no more than 2 may be of the same political party, 4 appointed by the General Assembly, 2 each on the recommendation of the President Pro Tempore and the Speaker, of which no more than 1 each may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-12 sets out the authority of the Commission to conduct ethics investigations of alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties committed by covered persons and legislative employees. After investigation and before hearing, complaints received against legislators and judicial officers are referred to the Legislative Ethics Committee, the Judicial Standards Commission, or the senior resident superior court judge in the county or district for district attorneys and to the chief district court judge of the county or district for clerks of court. As to complaints against public servants and legislative employees, after a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a private admonishment, or refer the matter to the employing entity for possible sanctions. Complaints, responses and the Commission's reports of its investigation are not public records until the employing authority imposes public sanctions. Hearings are generally held in closed session. The Commission has subpoena authority when authorized by the court.

G.S. 138A-13 grants the Commission authority to issue advisory opinions to legislators, public servants and legislative employees. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public. Opinions given to legislators are sent to the Legislative Ethics Committee to be modified or overturned.

G.S. 138A-14 sets out the requirement for the Commission to provide for mandatory ethics education programs for all public servants and judicial employees and their immediate staffs (individuals who report directly to the public servant), and legislators and legislative staff.

G.S. 138A-15 sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws, remind public servants of their ethical obligations, remind their fellow public servants about conflicts of interests and appearances of conflicts of interests, and arrange and promote in-house ethics education programs.

ARTICLE 3 sets out the requirements for filing statements of economic interests.

G.S. 138A-22 requires all judicial officials (justices, judges, district attorneys, clerks of court), public servants, except employees earning $60,000 or less, and legislators to file statements of economic interest (SEI) prior to their initial appointment, election, or employment and no later than March 15th of every year thereafter. An exception is made for appointees of newly elected constitutional officers, who have 30 days from the date of appointment or employment to file, when the appointment or employment is done within the first 60 days of the initial term in office. This section sets forth the requirement and procedure for candidates for judgeships and the Council of State to follow for filing their SEI, in the same manner as is required for candidates for the General Assembly.

G.S. 138A-23 makes statements of economic interest public records when filed, except SEI's of perspective appointees or employees do not become public until the person is appointed or employed.

G.S. 138A-24 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of $10,000 in real estate holdings, personal property leased, sold or bought to or from the State, publicly owned companies, non-publicly owned companies, vested trusts, indebtedness by type of lender, sources of income, businesses in which the filing person is an officer, employee, director, business associate, or owner; gifts from lobbyists or lobbyist's principals in excess of $200 during the preceding 12 months other than from extended family members. The statement also requires lists of memberships and associations in organizations over which the public servant's agency or board has jurisdiction, and felony convictions. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Commission is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 138A-25 requires the Commission to notify every filing person who fails to file or complete his or her required SEI within 30 days of the due date. Any filing person currently in office who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a $250 fine. Any filing person currently in office who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under Article 5.

G.S. 138A-26 makes it a Class 1 misdemeanor for a filing person to knowingly conceal or fail to disclose required information on a SEI.

G.S. 138A-27 makes it a Class H felony for a filing person to provide false or misleading information on a SEI knowing the information to be false or misleading.

ARTICLE 4 establishes ethical standards for covered persons.

G.S. 138A-31 prohibits covered persons from using their public position for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising that advances the private interest of the public servant or others. Use of the public servant's title is permitted for political advertising, charitable solicitations and other limited purposes. A covered person is prohibited from using State funds for advertising or public service announcements that contains the covered person's name, picture or voice except in the case of national emergencies.

G.S. 138A-32 restricts gifts that public servant, legislator or legislative employee can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinate State employees. It prohibits covered persons from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the public servant's agency. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, lodging, transportation, entertainment and recreation provided to all legislator in connection with a public event by a chamber of commerce, informational materials related to the covered person's duties, expenses associated with a speech or panel related to the covered person's public duties, items or services related to an organization to which the public servant or the public servant's agency belongs, items or services received at an educational conference or meeting, a plaque or nonmonetary recognition memento, gifts accepted on behalf of the State, anything available to the general public or all State employees, things of monetary value associated with travel and tourism and industry recruitment under certain conditions, gifts of less than $100 received in a foreign country as part of a trade mission, and gifts from extended family members.

This section also specifies that a gift accepted or solicited in compliance with this section without corrupt intent shall not constitute bribery.

G.S. 138A-33 prohibits public servants and legislative employees from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-34 prohibits public servants and legislative employees from using information gained in their official positions for personal financial gain.

G.S. 138A-35 requires public servants to use due diligence to determine if they have a conflict of interest and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-36 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has an economic interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance.

G.S. 138A-37 defines conflicts of interest for legislators. A legislator should not act on a legislative matter if the legislator has an economic interest in the matter being considered that would be substantially influence the legislator's independence of judgment on the matter.

G.S. 138A-38 sets out numerous exceptions to the restrictions in G.S. 138A-36 and 37, primarily involving situations where the benefit is no greater to the covered person than to the public in general, or when the covered person has received an ethics opinion that no conflict exists.

G.S. 138A-39 establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-40 prohibits a covered person or legislative employee from hiring or supervising a member of his or her extended family, except for legislators as permitted by the Legislative Services Commission, or specifically authorized by the public servant's employing entity.

G.S. 138A-41 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

ARTICLE 5 sets out the sanctions for violation of the Act. Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment. Willful violations by legislators subject them to sanctions by the house of which they are a member.

SECTION 2 exempts the Commission from the rulemaking provisions of Chapter 150B, The Administrative Procedure Act, but G.S. 138A-10(c) sets up a rulemaking process for the Commission.

SECTION 3 through 14 make conforming changes to the Legislative Ethics Act to reflect duties given to the State Ethics Commission with regards to legislative ethics including he filing of statements of economic interests, ethics education, advisory opinions and receipt of ethics complaints. **Section 7** expands the Legislative Ethics Committee from 10 to 12 members and requires equal partisan representation in each house on the Committee. **Section 12** recodifies the law authorizing the Committee to conduct ethics investigations consistent with the authority given to the State Ethics Commission to investigate complaints against public servants and judicial employees. **Section 13** amends the authority

of the Committee with regards to advisory opinions by giving the Committee authority to modify or override advisory opinions give to legislators by the State Ethics Commission.

SECTION 15 modifies the Department of Transportation ethics laws to conform to the changes made in Section 1 of the bill for other executive branch public officials.

SECTION 18 does the following:

- Prohibits lobbyist from giving gifts to legislators, legislative employees and public servants except as permitted under G.S. 138A-32 (summarized above).
- Makes developing goodwill part of the definition of lobbying.
- Defines "reportable expenditure" for reporting purposes to include anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch.
- Legislative staff is included under lobbying regulations.
- Prohibits a legislator or former legislator or member, or former member, of the Council of State from being employed as a lobbyist within 6 months after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board created under State law within 60 days of expiration of that lobbyist's registration.
- Prohibits a lobbyist from allowing a designated individual (legislator, legislative employee, or public servant) or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.
- Combines legislative and executive lobbying registrations and regulations into one and places them in a separate chapter.
- Treats solicitation of others to lobby as a separate item from direct and indirect lobbying, including for registration and reporting purposes.
- Lobbying expenditures by liaison personnel have to be reported the same as reportable expenditures by lobbyists, and the gift ban applies to liaison personnel.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that a fee of $100 is paid for each registration.
- Quarterly reporting of reportable expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session if there is a reportable expenditure made during that month.
- Increases the details of expenditure reports to include the fair market value or face value if shown, date, a description of the lobbying expenditure, name and address of the payee or beneficiary, name of any designated individual benefiting from the lobbying expenditure (or legislative employee or those person's immediate family members)
- The Secretary of State is granted rulemaking authority to facilitate disclosure of reportable expenditures, including the format of the report and additional categories.
- Bans all campaign contributions to General Assembly and Council of State races by lobbyists and lobbyist's principals.
- Bans the practice commonly referred to as "bundling" when done by lobbyists and lobbyist's principals.

- Requires registration by persons incurring expenses for solicitation of others in the following amounts:
  - Over $1,000 for media costs in a calendar quarter.
  - Over $1,000 for mailing costs in a calendar quarter.
  - Over $500 for conference or similar events in a calendar quarter.
- Requires expenditures of $200 or more made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply, and persons filing a statement of economic interest may fulfill reporting requirements on the statement of economic interest.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.

SECTION 22 transfers the lobbying regulation from the Secretary of State to the State Ethics Commission effective September 1, 2008.

SECTION 23 transfers the assets and personnel of the State Ethics Board to the State Ethics Commission effective October 1, 2006.

EFFECTIVE DATE: Most of the lobbying portions of the bill become effective January 1, 2007. Most of the remainder of the bill becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007. The conforming changes become effective January 1, 2007.

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-13-06 AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
ANDY VANORE	GOV'S OFFICE
WP Pulley	NCATL
Bob Phillips	CCNC
John Rupp	NCFPC
Chris Fitzsimmons	NCPW
AV Cameron	NRO
Dick Taylor	NCATL
CP Mello	NCATL
Mark Fleming	University System
	NC State
Andrew Meehan	NCAEC

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-13-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
Clark Kent	Daily Planet
[illegible]	" "
[illegible]	[illegible]
[illegible]	RAN · MWH - SOS - NEMVRC
Perry Newson	Bd. of Ethics
Kathleen Edwards	UNC-CH Daily Bulletin
Leigh Hayden	Bd of Ethics
Joal Broun	NC SOS
Matt Osborne	AOC
Louisa Warren	NCCLR
Barbara Canada	BBCBC
Stacy Flannery	NCHCBA

VISITOR REGISTRATION SHEET

JUDICIARY 1 COMMITTEE — 7-13-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE PAGE

NAME	FIRM OR AGENCY AND ADDRESS
John Beardsley	Cates Zeneca
[illegible]	JD NC, PA
Alex Sewell	Womble-Carlyle
Tom Cley	CWA
Richard O'Brien	PFPNC
Chad Hinton	Cintas
Chris Hayes	
Michael Hunsel	NCAE
Caroline Howe	Lt. Govs Office

From: Joyce Hodge (Senate LA Director)
Sent: Thursday, July 13, 2006 3:04 PM
Subject: J-1 Meeting 07-17-2006

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Monday	July 17, 2006	5:00 P.M.	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke

Senator Daniel G. Clodfelter, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06
Third Edition Engrossed 5/18/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1843-CSRU-104 [v.5]

7/11/2006 12:05:14 AM

Short Title: State Government Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

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

"**Chapter 138A.**

"**State Government Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'State Government Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted shall not be used to advance

narrow interests for oneself or others. Self-interest, partiality, and prejudice have no place in decision making for the public good. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, except for those public bodies that have only advisory authority, as determined and designated by the Commission.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the person or any member of the person's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(7) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(8) Confidential information. – Information defined as confidential by the General Statutes.

(9) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(10) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(11) Covered person. – A legislator, a public servant, or a judicial employee, as identified by the Commission under G.S. 138A-11.

(12) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(13) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For judicial employees, it is the Chief Justice.

(14) Extended family. – Spouse, lineal descendant and ascendant, sibling and sibling's spouse of the covered person and lineal descendant and ascendant, sibling, and sibling's spouse of the spouse of the covered person.

(15) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.

(16) Gift. – Anything of monetary value given or received without valuable consideration.

(17) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(18) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated.

(19) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(20) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.

(21) Legislative action. – As the term is defined in G.S. 120-47.1.

(22) Legislative employee. – As the term is defined in G.S. 120-47.1.

(23) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(24) Lobbying. – As the term is defined in G.S. 120-47.1.

(25) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.

(26) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(27) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(28) Pecuniary interest. – Any of the following:

a. Owning a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving during the preceding calendar year, compensation that is or will be required to be included as taxable income on federal income tax returns of the person, the person's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or

more in the preceding 12 months to the person, the person's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(29) Political party. – One of the two largest political parties in the State based on statewide voter registration at the time of appointment.

(30) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee, or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least 10 public servants are invited to attend and at least 10 employees or members of the principal or person actually attend.

(31) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(32) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"State Ethics Commission.

"**§ 138A-6. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-7. Membership.**

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be members of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom may be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom may be of the same political party.

Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(3) Two members appointed by the Governor shall serve initial terms of three years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any public servant or any candidate for a public office as a public servant over which the Commission would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable.

"**§ 138A-8. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Five members of the Commission constitute a quorum.

"**§ 138A-9. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-10. Powers and duties.**

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to judicial officers and covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies and procedures to accomplish the purposes of the Chapter.

(3) Identify and publish the names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual judicial officers and covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(5) Receive and refer complaints of violations against judicial officers and legislators in accordance with G.S. 138A-12.

(6) Investigate alleged violations against public servants and judicial employees in accordance with G.S. 138A-12.

(7) Render advisory opinions in accordance with G.S. 138A-13.

(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, judicial employees, and legislators and legislative employees, consistent with G.S. 138A-14.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants, judicial employees, and legislators in attending to and performing their duties.

(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number

of complaints referred under G.S. 138A-12(a), the number of complaints dismissed under G.S. 138A-12(b)(4), the number of complaints dismissed under G.S. 138A-12(f), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(j)(2), the number of complaints referred for appropriate action under G.S. 138A-12(j)(3), and the number of complaints pending action by the Commission.

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

"**§ 138A-11. Identify and publish names of covered persons and legislative employees.**

The Commission shall identify and publish at least quarterly, a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. This listing may be published electronically on a public Internet website maintained by the Commission.

"**§ 138A-12. Investigations by the Commission.**

(a) Jurisdiction. – The Commission may receive complaints of alleging unethical conduct by judicial officers and covered persons. The Commission shall investigate complaints alleging unethical conduct by public servants and judicial employees. The Commission shall not investigate complaints alleging unethical conduct by judicial officers or legislator but shall refer these complaints to the Judicial Standards Commission for complaints against justices and judges, the senior resident superior court judge of the district or county for complaints against district attorneys and clerks of court, and to the Committee for complaints against legislators. The number of complaints referred under this subsection shall be reported under G.S. 138A-10(a)(11).

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or judicial employee or any person responsible for the hiring, appointing, or supervising of a public servant or judicial employee, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-10.

(3) An alleged violation of the criminal law by a public servant or judicial employee in the performance of that individual's official duties.

(4) An alleged violation of G.S. 126-14.

(c) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and

specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer or investigate any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant or judicial employee who is the subject of the complaint within 30 days of the filing.

(d) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to initiate investigations upon request of any member of the Commission if there is reason to believe that a public servant or judicial employee has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(e) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-13, or referral to appropriate law enforcement or other authorities pursuant to subdivision (j)(1) of this section.

(f) Public Servant and Judicial Employee Cooperation With Investigation. – Public servants and judicial employees shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(g) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant or judicial employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of a public servant or judicial employee, the Commission shall provide written notice to the individual who filed the complaint and the public servant or judicial employee as to the fact of the investigation and the charges against the public servant or judicial employee. The public servant or judicial employee shall be given an opportunity to file a written response with the Commission.

(i) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints received against a public servant or a judicial employee. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant or judicial employee requests a hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, and the public servant or judicial employee. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) The Commission shall make available to the public servant or judicial employee prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the public servant or judicial employee requests that the hearing be held in

open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The public servant or judicial employee being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Settlement of Investigations. – The public servant or judicial employee who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(k) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant and notify the employing entity, if applicable.

b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.

d. Refer the matter for appropriate action to the Chief Justice for judicial employees.

e. Refer the matter to the Principal Clerks of the House and Senate of the General Assembly for constitutional officers of the State.

(l) Findings and Record. – The Commission shall render a written report of a violation of this Chapter made pursuant to complaints or Commission investigations. When a matter is referred under subsection (k) of this section, the Commission's report shall include detailed results of its investigation in support of the Commission's finding of a violation of this Chapter. The records and results of the Commission shall be confidential and not matters of public record, except when the public servant or judicial employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes sanctions. At such time as sanctions are imposed on a public servant or judicial employee, the complaint, response and Commission's report to the employing entity shall be made public.

(m) Recommendations of Sanctions. – After referring a matter under subsection (k) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's or judicial employee's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servant or judicial employee as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's or judicial employee's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant or judicial employee knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant or judicial employee has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant or judicial employee in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(c).

(9) The public servant's or judicial employee's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant or judicial employee, including removal of the public servant or judicial employee from the public servant's or judicial employee's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(n) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entity to discipline the public servant or judicial employee.

(o) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to continue to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a public servant or judicial employee ceases to be a public servant or judicial employee for any investigation that commenced

prior to the date the public servant or judicial employee ceases to be a public servant or judicial employee.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-13. Advisory opinions.**

(a) At the request of any public servant or judicial employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or judicial employee, legal counsel for any public servant or judicial employee, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or judicial employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except as set forth in subsection (b) of this section, reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or judicial employee, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except provided in this subsection, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

(1) Investigation by the Committee.

(2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. The immunity granted under this subsection shall not apply if the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(d) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all covered persons and upon publication.

(e) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not public records.

"**§ 138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, and all judicial employees, upon their election, appointment, or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every judicial employee, public servant and the immediate staff of every public servant, shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment or employment and shall offer periodic refresher presentations as the Commission deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission within three months of the person's election, reelection, appointment, or employment in a manner as the Commission deems appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered person and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, judicial employees and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-15. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants and judicial employees within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants and judicial employees in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(c) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants or judicial employees under that person's authority of the public servant's or judicial employee's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant and judicial employee to continually monitor, evaluate, and manage the public servant's and judicial employee's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants and judicial employees on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so

engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants and judicial employees under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants or judicial employees under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants and judicial employees with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants or judicial employees in connection with their designation, hiring, promotion, appointment or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-16 through 20. [Reserved]**

"Article3.

"Public Disclosure of Economic Interests.

"**§ 138A-21. Purpose.**

The purpose of disclosure of the financial and personal interests by judicial officers and covered persons is to assist judicial officers and covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the judicial official's and covered person's private interests and the judicial official's and covered person's public duties. It is critical to this process that current and prospective judicial officials and covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the judicial official's and covered person's private interests and the judicial official's and covered person's public duties. Judicial officials and covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the judicial officials and covered person's public position or duties might impact the judicial official's and covered person's private interests. Judicial officials and covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the

purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the judicial official's and covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-22. Statement of economic interest; filing required.**

(a) Every judicial official and covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (c) of this section. A prospective judicial official or prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) Within 10 days of the filing deadline for office of a judicial official or covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of all candidates who have filed as candidates for offices as a judicial official or covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Election under this section.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other judicial officers and covered persons the appropriate forms needed to comply with this Article.

"**§ 138A-23. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants or judicial employees under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant or judicial employee is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"**§ 138A-24. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

(1) The name, home address, occupation, employer, and business of the person.

(2) A list of each asset and liability of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) of the filing person, and the filing person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's spouse, including specific descriptions adequate to determine the location of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each nonpublicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the filing person shall indicate whether the listed company or entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000) in any other companies or entities which have any business dealings, contracts, or other involvement with the State. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the filing person or the members of the filing person's immediate family are the beneficiaries of a vested trust created, established, or controlled by the filing person, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the filing person, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The filing person shall make a good faith effort to list any individual or business entity with which the filing person, the filing person's extended family, or any business with which the filing person or a member of the filing person's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest for the filing person; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest for the filing person. For each individual or business entity listed under this sub-subdivision, the filing person shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. A list of all nonpublicly owned businesses with which, during the past five years, the filing person or the filing person's immediate family has been associated, indicating the time period of that association and the relationship with each business as an officer, employee, director, business associate, or owner. The list also shall indicate whether each nonpublicly owned business does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

l. A list of all bankruptcies filed during the preceding five years by the filing person, or any entity in which the filing person has a controlling interest or was the chief executive officer, the chief financial officer, or chief administrative officer. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

m. A list of nonprofit corporations or organizations with which the person is associated, and a list of which of those nonprofit corporations or organizations do business with the State, and a brief description of the nature of the business.

n. An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated.

o. A list of any pecuniary interests of the filing person or the filing person's immediate family not otherwise listed under this subdivision.

(3) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction.

(4) A list of any felony indictments or convictions of the filing person.

(5) Any other information that a reasonable person would conclude is necessary either to carry out the purposes of this Chapter or to fully disclose any potential conflict of interest. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(6) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and

that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(7) If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(c) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.

(2) The head of the agency in which the filing person serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The Chief Justice for judicial officers and judicial employees.

(5) The appointing or hiring authority for those public servants not under the Governor's authority.

(6) The State Board of Elections for those filing persons who are elected.

"**§ 138A-25. Failure to file.**

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-26. Concealing or failing to disclose material information.**

A filing person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-27. Penalty for false or misleading information.**

A filing person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading is guilty of a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-28 through 30. [Reserved]**

"Article 4.

"Ethical Standards for Covered Persons.

"**§ 138A-31. Use of public position for private gain.**

(a) A covered person shall not knowingly use the covered person's public position in any manner that will result in financial benefit, direct or indirect, to the covered person, a member of the covered person's extended family, or a person with whom, or business with which, the covered person is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a covered person that the covered person would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's ability to protect the public interest and perform the covered person's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, or the inclusion of a covered person's position in a biographical listing.

(c) Notwithstanding G.S. 163-278.16A, no public servant or legislator shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that public servant's or legislator's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to their official function. This subsection shall not apply to fundraising on behalf of and aired on public radio or public television.

"**§ 138A-32. Gifts.**

(a) A covered person shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person, or for another person, in return for being influenced in the discharge of the covered person's official responsibilities, other than that which is received by the covered person from the State for acting in the covered person's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31.

(d) No public servant or judicial employee shall knowingly accept anything of monetary value, directly or indirectly, from a person whom the public servant or judicial employee knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's or judicial employee's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's or judicial employee's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's or judicial employee's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Lodging, transportation, entertainment and recreation provided in connection with a public event by a chamber of commerce qualifying under 26 U.S.C. §501(c)(6) to which all legislators are invited when all the things of monetary value are provided within the geographic area represented by the chamber of commerce.

(3) Informational materials relevant to the duties of the covered person, or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person or legislative employee for a meeting at which the covered person or legislative employee participates in a panel or speaking engagement at the meeting related to the covered person's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement. Reasonable travel expenses necessary to attend the meeting and payments for registration and lodging for the 24-hour time periods may be paid in advance. Nothing in this subdivision shall prevent a covered person or legislative employee from arriving before or staying beyond the 24-hour time period at his or her own expense.

(5) Entertainment or recreation provided in connection with a public event sponsored by a charitable organization as defined under G.S. 1-539.11.

(6) Items or services received by a public servant or judicial employee in connection with a state, national, or regional organization in which the public servant, judicial employee, or that person's agency is a member by virtue of the person's public position.

(7) Items or services received by a legislator or legislative employee in connection with a state, regional, or national legislative organization of which the General Assembly, the legislator or legislative employee is a member by virtue of the person's legislative position.

(8) Items and services received relating to an educational conference or meeting.

(9) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(10) Gifts accepted on behalf of the State.

(11) Anything generally available or distributed to the general public or all other State employees.

(12) Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

(13) Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.

(14) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(15) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(16) Political contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(17) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee, or gifts received in conjunction with a marriage, birth, adoption, or death.

(18) Things of monetary value given to a public servant where the thing of monetary value is entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value in excess of ten dollars ($10.00), other than meals or beverages, shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(19) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(f) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed, or provided for consumption among the members and staff of the employing entity or the public.

(g) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a thing of value for purposes of subsection (c) of this section.

(h) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217, G.S. 14-218, or G.S. 120-86.

"**§ 138A-33. Other compensation.**

A public servant or judicial employee shall not solicit or receive personal financial gain, other than that received by the public servant or judicial employee from the State, or with the approval of the employing entity, for acting in the public servant's or judicial employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or judicial official's duties.

"**§ 138A-34. Use of information for private gain.**

A public servant or judicial employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or judicial employee's official responsibilities in a way that would affect a personal financial interest of the public servant or judicial employee, a member of the public servant's or judicial employee's extended family, or a person with whom or business with which the

public servant or judicial employee is associated. A public servant or judicial employee shall not improperly use or disclose any confidential information not a public record.

"**§ 138A-35. Other rules of conduct.**

(a) A public servant or judicial employee shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants or judicial employees on a board on which the public servant or judicial employee also serves, to determine whether the public servant or judicial employee has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant or judicial employee has a duty to inquire of the Commission as to that conflict.

(b) A covered person shall continually monitor, evaluate, and manage the covered person's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant and judicial employee shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"**§ 138A-36. Public servant and judicial employee participation in official actions.**

(a) Except as permitted by subsection (d) of this section, no public servant or judicial employee acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant or the judicial employee, a member of the public servant's or judicial employee's extended family, or a business with which the public servant or judicial employee is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's or judicial employee's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's or judicial employee's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant or judicial employee, (ii) a member of the public servant's or judicial employee's extended family, or (iii) a business with which the public servant or judicial employee is associated.

(b) A public servant or judicial employee described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant or judicial employee shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in

the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

"**§ 138A-37. Legislator participation in official actions.**

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or may reasonably and foreseeably benefit from the action, if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual pecuniary or economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question to the State Ethics Commission for an advisory opinion in accordance with G.S. 138A-13.

"**§ 138A-38. Permitted participation exception.**

(f) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) Where an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subsection, the Commission shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant or judicial employee made full written disclosure to the public servant's or judicial employee's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's or judicial employee's independence of judgment nor influence the public servant's or judicial employee's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant or judicial employee notifies, in writing, the Commission that the public servant judicial employee, or someone whom the public servant or judicial employee appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant or judicial employee discloses in writing the circumstances and nature of the conflict of interest.

"**§ 138A-39. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant or judicial employee has a disqualifying conflict of interest, the public servant or judicial employee shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant or judicial employee to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant or judicial employee from fulfilling a substantial function or portion of the public servant's or judicial employee's public duties.

"**§ 138A-40. Employment and supervision of members of covered person's extended family.**

A covered person shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State or local

office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or judicial employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's or judicial employee's extended family, except as specifically authorized by the public servant's or judicial employee's employing entity.

"**§ 138A-41. Other ethics standards.**

Nothing in this Chapter shall prevent the Supreme Court, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any covered person is grounds for disciplinary action. Except as specifically provided in Article 3 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly made either by the House or upon the recommendation of the Speaker of the House, the Speaker of the House may remove the offending public servant. For appointees of the General Assembly made either by the Senate or upon the recommendation of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant or judicial employee serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State and employees of the Judicial Department, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The State Ethics Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

(a) The Codifier of Rules shall publish unedited the rules and advisory opinions issued by the State Ethics Commission under Chapter 138A of the General Statutes in the North Carolina Register as they are received from the State Ethics Commission, in the format required by the Codifier.

(b) The Codifier of Rules shall publish unedited in the North Carolina Administrative Code the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

SECTION 4. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 5. G.S. 120-85, G.S. 120-87(b), G.S. 120-88 and Part II of Article 14 of Chapter 120 are repealed.

SECTION 6. Part 1 of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-85.1. Definitions.**

As used in this Article, the following terms mean:

(1) Business with which associated. – As defined in G.S. 138A-3.

(2) Confidential information. – As defined in G.S. 138A-3/

(3) Economic interest. – As defined in G.S. 138A-3.

(4) Immediate family. – As defined in G.S. 138A-3.

(5) Legislator. – As defined in G.S. 138A-3.

(6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.

(7) Vested trust. – As defined in G.S. 138A-3."

SECTION 7. G.S. 120-86 reads as rewritten;

"**§ 120-86. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate ~~household,~~family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift,

favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

~~(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under ~~G.S. 120-103.~~G.S. 120-103.1."

SECTION 8. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ twelve members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 9. G.S. 120-99(c) is repealed.

SECTION 10. G.S. 120-101 reads as rewritten:

"§ 120-101. Quorum; expenses of members.

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 11. G.S. 120-102 reads as rewritten:

"§ 120-102. Powers and duties of Committee.

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~may:

~~(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~

~~(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~

~~(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~

~~(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.~~

(5) ~~To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.~~Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) ~~To advise~~Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) ~~To propose~~Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt rules to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 12. G.S. 120-103 is repealed.

SECTION 13. Part III of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-103.1. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the filing of the complaint with the Committee, the Committee shall refer the complaint in accordance with subsection (i) of this section, or initiate an investigation of a complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee may:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(2) of this section.

(f) Legislator Cooperation With Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:
a. Oral evidence shall be taken only on oath or affirmation.
b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.
c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsection (g) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:
(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.
(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:
a. Issue a public or private admonishment to the legislator.
b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.
c. Refer the matter to the appropriate house for appropriate action, which shall include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.
(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – The complaint, response, records and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator

is a member, the complaint, response and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members."

SECTION 14. G.S 120-104 reads as rewritten:

"**§ 120-104. Advisory opinions.**

(a) At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. ~~These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall accept and review advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13. The Committee may modify or overrule the advisory opinions issued to legislators by the State Ethics Commission and the opinion of the Committee shall control. The failure of the Committee to modify or overrule an advisory opinion issued to a legislator by the State Ethics Commission shall constitute ratification of the State Ethics Commission's advisory opinion for purposes of the immunity granted under G.S. 138A-13(a).

(c) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(d) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators by rules, and these interpretations are binding on all legislators upon publication.

(e) The Committee shall publish its advisory opinions issued separately from the State Ethics Commission at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (e) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission, are confidential and not matters of public record."

SECTION 15. G.S. 120-105 reads as rewritten:

"**§ 120-105. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as ~~sections to cover the administrative branch of government and~~ Chapter 138A of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 16. G.S. 143B-350, reads as rewritten:

"**§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

...

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on

that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary.~~the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall:~~shall include

~~(1) Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the

Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

~~(2) Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~(3) Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in ~~nature~~ nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, ~~the North Carolina Board of Ethics,~~ the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This

program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

...."

SECTION 17. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 18.(a) Persons holding covered positions on January 1, 2007 shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 19.(b) Public servants holding positions on January 1, 2007 shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 20. Sections 5 through 16 of this act become effective January 1, 2007. The remainder of this act becomes effective October 1, 2006, applies to covered persons and legislative employees on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 1843:
Part III. Amend Lobbying Laws

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 13, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, Luebke	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	PCS to Third Edition H1843-CSRU-104v.10, page 40		

SUMMARY: Part III of the proposed committee substitute for House Bill 1843 amends North Carolina's lobbying laws to do all of the following:

1. ***Implements earlier certain prohibitions creating waiting periods before certain State officers may lobby and barring lobbyists from certain appointments and other activities, and resulting criminal penalties for violations.***
2. ***Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).***
3. ***Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.***
4. ***Requires reporting of certain campaign contributions by registered lobbyists and lobbyist's principals.***
5. ***Permits the issuance of advisory opinions and requires lobbying education programs.***

CURRENT LAW: Under current law effective until January 1, 2007, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

S.L. 2005-456 (Senate Bill 612) amended the current law, to take effect January 1, 2007. Changes effective January 1, 2007, include:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration, fee and reporting.
- Legislative staff is included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasurers for legislative races.

BILL ANALYSIS: **The PCS amends the current lobbying laws in the following ways (Effective when the bill becomes law):**

- Prohibits a legislator or former legislator from being employed as a lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative, Governor's, or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person(legislator or executive branch officer), legislative employee, or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.

The PCS amends the lobbying laws scheduled to take effect January 1, 2007, in the following ways:

- Combines legislative and executive lobbying registrations and regulations into one and places them in a separate chapter.
- The definition of covered person to means legislators, executive branch officers (the same as for Part I of the PCS), and legislative staff.
- Prohibits lobbyists and lobbyist's principals from giving the same gifts to covered persons that those persons cannot accept under Part I of the pcs.
- Treats solicitation of others to lobby as a separate item from direct and indirect lobbying, including for registration and reporting purposes.
- Lobbying expenditures by liaison personnel and State agencies have to be reported the same as lobbying expenditures by lobbyists.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that a fee of $100 is paid for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session if there is a lobbing expenditure made during that month.
- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the lobbying expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the lobbying expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Other expenditures

  The Secretary of State is granted rulemaking authority to facilitate disclosure of lobbying expenditures, including the format of the report and additional categories.
- The lobbyist's principal must also report, in addition to the lobbying expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Requires reporting of campaign contributions to General Assembly and Council of State races by lobbyists and lobbyist's principals on their quarterly reports.

- Requires reporting of campaign contributions made by another but delivered by the lobbyist or lobbyist principal to the contributee.
- Requires registration by persons incurring expenses for solicitation of others in the following amounts:
    - Over $1,000 for media costs in a calendar quarter.
    - Over $1,000 for mailing costs in a calendar quarter.
    - Over $500 for conference or similar events in a calendar quarter.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
- Clarifies the no-gift registry for gifts from lobbyists.

EFFECTIVE DATE: Except as noted above, the act becomes effective January 1, 2007.

BACKGROUND: In 2005, the North Carolina General Assembly passed S.L. 2005-456 (SB 612), which amended North Carolina's lobbying laws effective January 1, 2007. House Bill 1849, first edition, is a recommendation of the House Select Committee on Ethics and Governmental Reform. That Committee's charge, as amended on February 20, 2006, directs the Committee to "Examine the provisions of the 2005 rewrite of the lobbying law, S.L. 2005-456 (Senate Bill 612) to determine if portions of that law could be implemented prior to its original effective date of January 1, 2007 and determine whether any additional areas of lobbying regulation should be clarified or strengthened, including prohibiting lobbyists from raising funds for or personally contributing to political campaigns, and from holding any position in a legislative or executive branch campaign."

Walker Reagan and Brad Krehely contributed to this summary.

H1843e3-SMST-CSRU-104v10, page 40

From: Joyce Hodge (Senate LA Director)
Sent: Thursday, July 13, 2006 3:04 PM
Subject: J-1 Meeting 07-17-2006

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Monday	July 17, 2006	5:00 P.M.	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1843	Revise Legislative Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke

Senator Daniel G. Clodfelter, Chair

Minutes

Senate Judiciary I Committee
July 17, 2006
Room 1027, Legislative Building
Senator Daniel G. Clodfelter, Presiding

5:00 P.M

The Senate Judiciary I Committee met on Monday, July 17, 2006 in Room 1027 of the Legislative Building. Senator Daniel G. Clodfelter, Chairman presided.

Chairman Clodfelter recognized Erika Churchill to give a review of the revisions to Proposed Committee Substitute to House Bill 1843, Entitled State Government Ethics Act-1.

Ms. Churchill was called upon to explain the changes in the lobbying laws portion beginning on ***Page 32.*** Ms. Churchill stated that last summer the General Assembly made some changes to the lobbying laws. The current law is that lobbying only applies to a direct communication between a lobbyist and a legislator about a specific action. In ***House Bill 1843***, expenditures related to that section about 1843 has to be reported by the lobbyist and the lobbyist principal. Last summer, the General Assembly enacted (Senate Bill 612) which amended the current law, to take effect January 1, 2007.

Senate Bill 612 includes:

- Developing goodwill is added as part of the definition of lobbying.
- The definition of "expenditure" for reporting purposes includes anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch under a separate registration fee and reporting.
- Legislative staff is included under lobbying regulations.
- The frequency of reporting lobbying expenditures is increased to monthly during regular session and quarterly in the interim; and quarterly reports for executive branch lobbying.
- Legislators and certain executive branch officials are prohibited from lobbying within 6 months of leaving office.
- Lobbyists are prohibited from serving as campaign treasures for legislative races.

Part III. Amend Lobbying Laws.

§ 120-47.7C. Prohibitions. ***Pages 42 beginning on Line 1 through Line 29. Please see detailed information in the Proposed Committee Substitute, which is attached***

Also on Page 42, Lines 28 through 33 are included in Senate Bill 612. Please see attached Proposed Committee Substitute for detailed information.

Executive Action, beginning on Page 43, Line3. Please see attached Proposed Committee Substitute for detailed information.

Chairman Clodfelter recognized Walker Regan to review the changes in the investigative authority in the Legislative Ethics Committee. ***Please see attached Proposed Committee Substitute for detailed information.***

In response to Senator Hoyle's question as to whether or not the Legislative Ethics Committee received an appropriations; Mr. Regan stated that yes, there was an appropriation of about $450,000.

Senator Clodfelter stated that if anyone would like to offer amendments to Proposed Committee Substitute to prepare the amendments tonight, and present them at the meeting tomorrow, July 18, 2006 at 9:00 a.m.

There being no further business, the meeting was adjourned.

Respectfully Submitted By,

Senator Daniel G. Clodfelter, Chairman

Daladier C. Miller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06

Third Edition Engrossed 5/18/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1843-CSRU-104 [v.9]

7/12/2006 11:51:21 PM

Short Title: State Government Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, TO AMEND THE LOBBYING LAWS, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT.

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

"**Chapter 138A.**

"**State Government Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'State Government Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in

carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted shall not be used to advance narrow interests for oneself or others. Self-interest, partiality, and prejudice have no place in decision making for the public good. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, except for those public bodies that have only advisory authority, as determined and designated by the Commission.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business of which the person or any member of the person's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated

investment company, or pension or deferred compensation plan, if all of the following apply:

a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(7) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(8) Confidential information. – Information defined as confidential by the General Statutes.

(9) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(10) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(11) Covered person. – A legislator, a public servant, or a judicial employee, as identified by the Commission under G.S. 138A-11.

(12) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(13) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For judicial employees, it is the Chief Justice.

(14) Extended family. – Spouse, lineal descendant and ascendant, sibling and sibling's spouse of the covered person and lineal descendant and ascendant, sibling, and sibling's spouse of the spouse of the covered person.

(15) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.

(16) Gift. – Anything of monetary value given or received without valuable consideration.

(17) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(18) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated.

(19) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(20) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.

(21) Legislative action. – As the term is defined in G.S. 120C-100.

(22) Legislative employee. – As the term is defined in G.S. 120C-100.

(23) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(24) Lobbying. – As the term is defined in G.S. 120C-100.

(25) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.

(26) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(27) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(28) Pecuniary interest. – Any of the following:

a. Owning a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving during the preceding calendar year, compensation that is or will be required to be included as taxable income on federal income tax returns of the person, the person's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or

more in the preceding 12 months to the person, the person's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(29) Political party. – One of the two largest political parties in the State based on statewide voter registration at the time of appointment.

(30) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a subcommittee, a county legislative delegation, a joint committee, or legislative caucus and to which at least 10 employees or members of the principal actually attend.

b. An organized gathering of individuals open to the general public or to which at least 10 public servants are invited to attend and at least 10 employees or members of the principal or person actually attend.

(31) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions as defined in G.S. 126-5(b) and employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

i. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

j. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

k. Members of the Commission.

l. Persons under contract with the State working in or against a position included under this subdivision.

(32) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"State Ethics Commission.

"**§ 138A-6. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-7. Membership.**

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be members of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom may be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom may be of the same political party.

Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(3) Two members appointed by the Governor shall serve initial terms of three years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable.

"**§ 138A-8. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Five members of the Commission constitute a quorum.

"**§ 138A-9. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-10. Powers and duties.**

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to judicial officers and covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies and procedures to accomplish the purposes of the Chapter.

(3) Identify and publish the names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual judicial officers and covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(5) Receive and refer complaints of violations against judicial officers and legislators in accordance with G.S. 138A-12.

(6) Investigate alleged violations against public servants and judicial employees in accordance with G.S. 138A-12.

(7) Render advisory opinions in accordance with G.S. 138A-13.

(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, judicial employees, and legislators and legislative employees, consistent with G.S. 138A-14.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants, judicial employees, and legislators in attending to and performing their duties.

(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number

of complaints referred under G.S. 138A-12(a), the number of complaints dismissed under G.S. 138A-12(b)(4), the number of complaints dismissed under G.S. 138A-12(f), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(j)(2), the number of complaints referred for appropriate action under G.S. 138A-12(j)(3), and the number of complaints pending action by the Commission.

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

"**§ 138A-11. Identify and publish names of covered persons and legislative employees.**

The Commission shall identify and publish at least quarterly, a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. This listing may be published electronically on a public Internet website maintained by the Commission.

"**§ 138A-12. Investigations by the Commission.**

(a) Jurisdiction. – The Commission may receive complaints of alleging unethical conduct by judicial officers and covered persons. The Commission shall investigate complaints alleging unethical conduct by public servants and judicial employees. The Commission shall not investigate complaints alleging unethical conduct by judicial officers or legislators but shall refer these complaints to the Judicial Standards Commission for complaints against justices and judges, the senior resident superior court judge of the district or county for complaints against district attorneys and clerks of court, and to the Committee for complaints against legislators. The number of complaints referred under this subsection shall be reported under G.S. 138A-10(a)(11).

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or judicial employee or any person responsible for the hiring, appointing, or supervising of a public servant or judicial employee, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-10.

(3) An alleged violation of the criminal law by a public servant or judicial employee in the performance of that individual's official duties.

(4) An alleged violation of G.S. 126-14.

(c) Complaint. –

(1) A complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and

specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (c) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer or investigate any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the public servant or judicial employee who is the subject of the complaint within 30 days of the filing.

(d) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall be dismissed. The Commission is authorized to initiate investigations upon request of any member of the Commission if there is reason to believe that a public servant or judicial employee has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member can take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(e) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters concerning public servants and judicial employees other than complaints properly before the Commission under subsection (a) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-13, or referral to appropriate law enforcement or other authorities pursuant to subdivision (k)(1) of this section.

(f) Public Servant and Judicial Employee Cooperation With Investigation. – Public servants and judicial employees shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(g) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a public servant or judicial employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of a public servant or judicial employee, the Commission shall provide written notice to the individual who filed the complaint and the public servant or judicial employee as to the fact of the investigation and the charges against the public servant or judicial employee. The public servant or judicial employee shall be given an opportunity to file a written response with the Commission.

(i) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints received against a public servant or a judicial employee. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant or judicial employee requests a hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, and the public servant or judicial employee. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) The Commission shall make available to the public servant or judicial employee prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.

(3) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the public servant or judicial employee requests that the hearing be held in

open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The public servant or judicial employee being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Settlement of Investigations. – The public servant or judicial employee who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(k) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant and notify the employing entity, if applicable.

b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.

d. Refer the matter for appropriate action to the Chief Justice for judicial employees.

e. Refer the matter to the Principal Clerks of the House and Senate of the General Assembly for constitutional officers of the State.

(l) Findings and Record. – The Commission shall render a written report of a violation of this Chapter made pursuant to complaints or Commission investigations. When a matter is referred under subsection (k) of this section, the Commission's report shall include detailed results of its investigation in support of the Commission's finding of a violation of this Chapter. The records and results of the Commission shall be confidential and not matters of public record, except when the public servant or judicial employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes sanctions. At such time as sanctions are imposed on a public servant or judicial employee, the complaint, response and Commission's report to the employing entity shall be made public.

(m) Recommendations of Sanctions. – After referring a matter under subsection (k) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's or judicial employee's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servant or judicial employee as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's or judicial employee's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant or judicial employee knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant or judicial employee has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant or judicial employee in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(c).

(9) The public servant's or judicial employee's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant or judicial employee, including removal of the public servant or judicial employee from the public servant's or judicial employee's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(n) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entity to discipline the public servant or judicial employee.

(o) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to continue to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a public servant or judicial employee ceases to be a public servant or judicial employee for any investigation that commenced

prior to the date the public servant or judicial employee ceases to be a public servant or judicial employee.

(p) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 138A-13. Advisory opinions.**

(a) At the request of any public servant or judicial employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or judicial employee, legal counsel for any public servant or judicial employee, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or judicial employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except as set forth in subsection (b) of this section, reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or judicial employee, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except provided in this subsection, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

(1) Investigation by the Committee.

(2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. The immunity granted under this subsection shall not apply if the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(d) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all covered persons and upon publication.

(e) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not public records.

"**§ 138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, and all judicial employees, upon their election, appointment, or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every judicial employee, public servant and the immediate staff of every public servant, shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment or employment and shall offer periodic refresher presentations as the Commission deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission within three months of the person's election, reelection, appointment, or employment in a manner as the Commission deems appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered person and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, judicial employees and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

"**§ 138A-15. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants and judicial employees within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants and judicial employees in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(c) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants or judicial employees under that person's authority of the public servant's or judicial employee's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant and judicial employee to continually monitor, evaluate, and manage the public servant's and judicial employee's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants and judicial employees on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so

engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants and judicial employees under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants or judicial employees under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants and judicial employees with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants or judicial employees in connection with their designation, hiring, promotion, appointment or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-16 through 20. [Reserved]**

"Article3.

"Public Disclosure of Economic Interests.

"**§ 138A-21. Purpose.**

The purpose of disclosure of the financial and personal interests by judicial officers and covered persons is to assist judicial officers and covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the judicial official's and covered person's private interests and the judicial official's and covered person's public duties. It is critical to this process that current and prospective judicial officials and covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the judicial official's and covered person's private interests and the judicial official's and covered person's public duties. Judicial officials and covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the judicial officials and covered person's public position or duties might impact the judicial official's and covered person's private interests. Judicial officials and covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the

purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the judicial official's and covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-22. Statement of economic interest; filing required.**

(a) Every judicial official and covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (c) of this section. A prospective judicial official or prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) Within 10 days of the filing deadline for office of a judicial official or covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of all candidates who have filed as candidates for offices as a judicial official or covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Election under this section.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other judicial officers and covered persons the appropriate forms needed to comply with this Article.

"**§ 138A-23. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants or judicial employees under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant or judicial employee is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"**§ 138A-24. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

(1) The name, home address, occupation, employer, and business of the person.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned of the filing person, and the filing person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's spouse, including descriptions adequate to determine the location by city and county of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company.

f. The name of each nonpublicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, a list any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

h. For any company or business entity listed under sub-subdivisions f. and g. of this subdivision, list any company or business entity that has any material business dealings, contracts, or other involvement with the State, including a brief description of the business activity.

i. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

j. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.

k. A list of each source (not specific amounts) of income received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains and business income.

l. A list of all nonpublicly owned businesses with which the person is an officer, employee, director, business associate, or owner. The list also shall indicate whether each nonpublicly owned business does business with or is regulated by the State, and the nature of the business done with the State.

m. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do

business with the State or receive State funds, and a brief description of the nature of the business.

n. An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This sub-subdivision does not apply to legislators.

o. A list of all gifts, and the sources of the gifts, of a value of more than _____ received during the 12 months preceding the reporting period under subsection(b) of this section from sources other than the person's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of _____ received from any source having business with, or regulated by, the State.

(3) If the person is a practicing attorney, an indication of whether the person, or the law firm with which the person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty.
c. Corporation law.
d. Criminal law.
e. Decedents' estates.
f. Insurance law.
g. Labor law.
h. Local government.
i. Negligence – defendant.
j. Negligence – plaintiff.
k. Real property.
l. Taxation.
m. Utilities regulation.

(4) Except as provided under subdivision (3) of this section, if the person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of clients described by type of business and the nature of services rendered, for which payment for services were charged or paid during any single year of the past five years in excess of ten thousand dollars ($10,000).

(5) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject

matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to legislators.

(6) A list of any felony convictions of the filing person.

(7) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(c) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(d) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.

(2) The head of the agency in which the filing person serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The Chief Justice for judicial officers and judicial employees.

(5) The appointing or hiring authority for those public servants not under the Governor's authority.

(6) The State Board of Elections for those filing persons who are elected.

"**§ 138A-25. Failure to file.**

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-26. Concealing or failing to disclose material information.**

A filing person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-27. Penalty for false or misleading information.**

A filing person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading is guilty of a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-28 through 30. [Reserved]**

"Article 4.

"Ethical Standards for Covered Persons.

"**§ 138A-31. Use of public position for private gain.**

(a) A covered person shall not knowingly use the covered person's public position in any manner that will result in financial benefit, direct or indirect, to the covered person, a member of the covered person's extended family, or a person with whom, or business with which, the covered person is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a covered person that the covered person would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's ability to protect the public interest and perform the covered person's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. §501(c)(3).

(c) Notwithstanding G.S. 163-278.16A, no public servant or legislator shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, or the Internet, that contains that public servant's or legislator's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to their official function. This subsection shall not apply to fundraising on behalf of and aired on public radio or public television.

"§ 138A-32. Gifts.

(a) A covered person shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person, or for another person, in return for being influenced in the discharge of the covered person's official responsibilities, other than that which is received by the covered person from the State for acting in the covered person's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept anything of monetary value, directly or indirectly, from a lobbyist or principal as defined in G.S. 120C-100.

(d) No public servant or judicial employee shall knowingly accept anything of monetary value, directly or indirectly, from a person whom the public servant or judicial employee knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's or judicial employee's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's or judicial employee's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's or judicial employee's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Lodging, transportation, entertainment and recreation provided in connection with a public event by a chamber of commerce qualifying under 26 U.S.C. §501(c)(6) to which all legislators are invited when all the things of monetary value are provided within the geographic area represented by the chamber of commerce.

(3) Informational materials relevant to the duties of the covered person, or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person or legislative employee for a meeting at which the covered person or legislative employee participates in a panel or speaking engagement at the meeting related to the covered person's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement. Reasonable travel expenses necessary to attend the meeting and payments for registration and lodging for the 24-hour time periods may be paid in advance.

Nothing in this subdivision shall prevent a covered person or legislative employee from arriving before or staying beyond the 24-hour time period at his or her own expense.

(5) Entertainment or recreation provided in connection with a public event sponsored by a charitable organization as defined under G.S. 1-539.11.

(6) Items, services and entertainment received by a public servant or judicial employee in connection with a state, national, or regional organization in which the person's agency is a member or the public servant or judicial employee is a member by virtue of the person's public position., provided the items, services, or entertainment is made available to all attendees.

(7) Items, services and entertainment received by a legislator or legislative employee in connection with a state, regional, or national legislative organization of which the General Assembly is a member or the legislator or legislative employee is a member by virtue of the person's legislative position, provided the items, services, or entertainment is made available to all attendees.

(8) Items, services, and entertainment received in connection with an educational conference or meeting, provided the items, services, or entertainment is made available to all attendees.

(9) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(10) Gifts accepted on behalf of the State.

(11) Anything generally made available or distributed to the general public or all other State employees, by lobbyists or lobbyist's principals.

(12) Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

(13) Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.

(14) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(15) Academic or athletic scholarships made on terms not more favorable than scholarships generally available to the public.

(16) Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(17) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee, or gifts received in conjunction with a marriage, birth, adoption, death, or religious ceremonial occasion.

(18) Things of monetary value given to a public servant not otherwise subject to an exception under this subsection, where the thing of monetary value is meals and beverages, transportation, lodging,

entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the thing of value, and the public servant did not accept the thing of value in exchange for the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the thing of value. The report shall include a description and value of the thing of value and a description how the thing of value contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible thing of value, other than meals or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt.

(19) Things of monetary value of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(f) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed, or provided for consumption among the members and staff of the employing entity or the public.

(g) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a thing of value for purposes of subsection (c) of this section.

(h) Acceptance or solicitation of a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 14-217, G.S. 14-218, or G.S. 120-86.

"**§ 138A-33. Other compensation.**

A public servant or judicial employee shall not solicit or receive personal financial gain, other than that received by the public servant or judicial employee from the State, or with the approval of the employing entity, for acting in the public servant's or judicial employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or judicial official's duties.

"**§ 138A-34. Use of information for private gain.**

A public servant or judicial employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or judicial employee's official responsibilities in a way that would affect a personal financial interest of the public servant or judicial employee, a member of the public servant's or judicial employee's extended family, or a person with whom or business with which the public servant or judicial employee is associated. A public servant or judicial employee shall not improperly use or disclose any confidential information not a public record.

"**§ 138A-35. Other rules of conduct.**

(a) A public servant or judicial employee shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants or judicial employees on a board on which the public servant or judicial employee also serves, to determine whether the public servant or judicial employee has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant or judicial employee has a duty to inquire of the Commission as to that conflict.

(b) A covered person shall continually monitor, evaluate, and manage the covered person's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant and judicial employee shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"**§ 138A-36. Public servant and judicial employee participation in official actions.**

(a) Except as permitted by subsection (d) of this section, no public servant or judicial employee acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant or the judicial employee, a member of the public servant's or judicial employee's extended family, or a business with which the public servant or judicial employee is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's or judicial employee's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's or judicial employee's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant or judicial

employee, (ii) a member of the public servant's or judicial employee's extended family, or (iii) a business with which the public servant or judicial employee is associated.

(b) A public servant or judicial employee described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant or judicial employee shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

"**§ 138A-37. Legislator participation in official actions.**

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or may reasonably and foreseeably benefit from the action, if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual pecuniary or economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal

clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question to the State Ethics Commission for an advisory opinion in accordance with G.S. 138A-13.

"**§ 138A-38. Permitted participation exception.**

(f) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) Where an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subsection, the Commission shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant or judicial employee made full written disclosure to the public servant's or judicial employee's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's or judicial employee's independence of judgment nor influence the public servant's or judicial employee's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant or judicial employee notifies, in writing, the Commission that the public servant judicial employee, or someone whom the public servant or judicial employee appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant or judicial

employee discloses in writing the circumstances and nature of the conflict of interest.

"**§ 138A-39. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant or judicial employee has a disqualifying conflict of interest, the public servant or judicial employee shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant or judicial employee to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant or judicial employee from fulfilling a substantial function or portion of the public servant's or judicial employee's public duties.

"**§ 138A-40. Employment and supervision of members of covered person's extended family.**

A covered person shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State or local office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or judicial employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's or judicial employee's extended family, except as specifically authorized by the public servant's or judicial employee's employing entity.

"**§ 138A-41. Other ethics standards.**

Nothing in this Chapter shall prevent the Supreme Court, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other boards from adopting more stringent ethics standards applicable to that public agency's operations.

"**§ 138A-42 through 44. [Reserved]**

Legislative Ethics Committee

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any covered person is grounds for disciplinary action. Except as specifically provided in Article 3 of this Chapter and for perjury under G.S. 138A-25 and G.S. 138A-38, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly made either by the House or upon the recommendation of the Speaker of the House, the Speaker of the House may remove the offending public servant. For appointees of the

General Assembly made either by the Senate or upon the recommendation of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant or judicial employee serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State and employees of the Judicial Department, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The State Ethics Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2. G.S. 150B-1 is amended by adding a new subsection to read:

"(g) Exemption of State Ethics Commission. – Except for G.S. 150B-21.20A and Article 4 of this Chapter, no other provision of this Chapter applies to the State Ethics Commission."

SECTION 3. Part 4 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.20A. Publication of rules and advisory opinions of State Ethics Commission.**

(a) The Codifier of Rules shall publish in the North Carolina Register unedited the rules of the State Ethics Commission under Chapter 138A of the General Statutes and advisory opinions published under G.S. 138A-13(e), as they are received from the State Ethics Commission, in the format required by the Codifier.

(b) The Codifier of Rules shall publish in the North Carolina Administrative Code unedited the rules as codified and issued by the State Ethics Commission under Chapter 138A of the General Statutes, in the format required by the Codifier."

PART II. AMEND LEGISLATIVE ETHICS ACT.

SECTION 4. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 5. G.S. 120-85, G.S. 120-87(b), G.S. 120-88 and Part II of Article 14 of Chapter 120 are repealed.

SECTION 6. Part 1 of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-85.1. Definitions.**

As used in this Article, the following terms mean:

(1) Business with which associated. – As defined in G.S. 138A-3.

(2) Confidential information. – As defined in G.S. 138A-3.

(3) Economic interest. – As defined in G.S. 138A-3.

(4) Immediate family. – As defined in G.S. 138A-3.

(5) Legislator. – As defined in G.S. 138A-3.

(6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.

(7) Vested trust. – As defined in G.S. 138A-3."

SECTION 7. G.S. 120-86 reads as rewritten;

"**§ 120-86. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate ~~household,~~family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

~~(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under ~~G.S. 120-103.~~G.S. 120-103.1."

SECTION 8. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ twelve members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and

~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 9. G.S. 120-99(c) is repealed.

SECTION 10. G.S. 120-101 reads as rewritten:

"**§ 120-101. Quorum; expenses of members.**

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 11. G.S. 120-102 reads as rewritten:

"**§ 120-102. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~may:

~~(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~

~~(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~

~~(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~

~~(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.~~

(5) ~~To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.~~Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) ~~To advise~~Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) ~~To propose~~Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt rules to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 12. G.S. 120-103 is repealed.

SECTION 13. Part III of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-103.1. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the filing of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section, or initiate an investigation of a complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee may:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(2) of this section.

(f) Legislator Cooperation With Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsection (g) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which shall include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (c) of this section, the complaint, response, records and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members."

SECTION 14. G.S 120-104 reads as rewritten:

"**§ 120-104. Advisory opinions.**

(a) At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. ~~These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall accept and review advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13. The Committee may modify or overrule the advisory opinions issued to legislators by the State Ethics Commission and the opinion of the Committee shall control. The Committee shall provide the Commission with the advisory opinion modified or overruled by the Committee, and the Commission shall publish the Committee's opinion under G.S. 138A-13(e). The failure of the Committee to modify or overrule an advisory opinion issued to a legislator by the State Ethics Commission shall constitute ratification of the State Ethics Commission's advisory opinion for purposes of the immunity granted under G.S. 138A-13(a).

(c) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(d) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators by rules, and these interpretations are binding on all legislators upon publication.

(e) The Committee shall publish its advisory opinions issued separately from the State Ethics Commission at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (e) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission, are confidential and not matters of public record."

SECTION 15. G.S. 120-105 reads as rewritten:

"**§ 120-105. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as ~~sections to cover the administrative branch of government and~~ Chapter 138A of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 16. G.S. 143B-350, reads as rewritten:

"**§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

...

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or

political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary.~~the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall:~~shall include

~~(1)~~ ~~Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

~~(2)~~ ~~Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~(3)~~ ~~Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or~~

~~other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in ~~nature~~ nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, ~~the North Carolina Board of Ethics,~~ the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

...."

PART III. AMEND LOBBYING LAWS.

SECTION 17.(a) G.S. 120-47.7C as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 17.(b) G.S. 120-47.7C as enacted by Section 1(a) of this act reads as rewritten:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as ~~an executive or~~ a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within ~~six months~~one year after the end of that member's service in the General Assembly.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or~~ a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within ~~six months~~one ~~after~~year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General ~~Assembly.~~Assembly or Governor or Council of State.

(d) A legislative or executive lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, executive branch officer, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the ~~expenditure~~lobbying expenditure."

SECTION 17.(c) G.S. 120-47.7C as enacted by this act is repealed effective January 1, 2007."

SECTION 18.(a) G.S. 120-47.7B as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 18.(b) G.S. 120-47.7B as enacted by this act is repealed effective January 1, 2007."

SECTION 19.(a) Article 9A of Chapter 120 of the General Statutes is repealed.

SECTION 19.(b) The General Statutes are amended by adding a new Chapter to read:

"**Chapter 120C.**

"**Lobbying.**

"Article 1.

"General Provisions.

"**§ 120C-100. Definitions.**

(a) As used in this Article, the following terms mean:

(1) Covered person. – A legislator, legislative employee, or public servant.

(2) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, promulgation, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, rule or other decision by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Proceedings of judicial or quasi-judicial nature in contested cases.

b. An individual or another person on that person's behalf applying for a permit, license, payment, contract, determination of eligibility or certification, or asserting a claim, right, obligation.

c. Administrative functions.

d. Public comments made at an open meeting on behalf of another person, or submitted as written comment, on proposed executive action in response to a request for public comment, provided identity of the person on who's behalf the comments are made is disclosed as part of the public participation and no lobbying expenditure is made.

(3) In session. – One of the following:

a. The General Assembly is in special session.

b. The General Assembly is in veto session.

c. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

(4) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(5) Legislative employee. – Employees and officers of the General Assembly.

(6) Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying covered persons.

(7) Legislator. – A member or presiding officer of the General Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(8) Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a covered person or that person's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a covered person or that person's immediate family with the intention of influencing current or future legislative or executive action, but does not include communications, activities, or monies spent as part of a

business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(9) Lobbying expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered person or that person's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ($10.00) per covered person per single calendar day.

b. A contract, agreement, promise or other obligation whether or not legally enforceable.

(10) Lobbyist. – An individual who engages in lobbying and meets any of the following criteria:

a. Is employed by a person and makes a lobbying expenditure.

b. Is employed by a person for the intended purpose of lobbying or a significant part of that individual's duties include lobbying.

c. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.

d. Contracts for economic consideration for the purpose of lobbying.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700.

(11) Lobbyist principal and principal. – The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

(12) News medium. – Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(13) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.

(14) Solicitation of others. – The petitioning or requesting of the general public to influence legislative or executive action, or both by a lobbyist or lobbyists' principal or other person, except communication between the lobbyist or lobbyist's principal or other person and the lobbyist's principal's stockholders, employees, board members, officers, or other

recipients who have requested the lobbyist's principal's or other person's regular publications or notices.

(b) The definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter.

"**§ 120C-101. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120C-102. Advisory opinions.**

(a) At the request of any person affected by this Chapter, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the covered person, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120C-103. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all covered persons, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Secretary of State shall make basic lobbying education and awareness presentations to all covered persons upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Secretary of State deems appropriate. Every covered person shall participate in a lobbying presentation approved by the Secretary of State within six months of the person's election, appointment, or hiring and shall attend

refresher lobbying education presentations at least every two years thereafter in a manner the Secretary of State deems appropriate. Upon request, the Secretary of State shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary of State shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all covered persons, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary of State shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to covered persons. The collection of laws, rules, and regulations shall be made available electronically as resource material to covered persons, lobbyists, and lobbyists' principals, upon request.

"Article 2.

"Registration.

"§ 120C-200. Lobbyist registration procedure.

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120C-201. Lobbyist's registration fee.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section in cases of hardship.

"§ 120C-202-205. Reserved for future codification.

"§ 120C-206. Lobbyist's principal's authorization.

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

"**§ 120C-207. Lobbyist's principal's fees.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by subsection (d) of this section for lobbyist's principals that have been granted non-profit status under 26 U.S.C. 501(c)(3).

"**§ 120C-208-210. Reserved for future codification.**

"**§ 120C-215. Other persons required to register.**

A person incurring an expense for solicitation of others as defined in G.S. 120C-100(14) shall register and report under this Chapter when the expense is one of the following:

(1) Media costs exceeding a total of one thousand dollars ($1000) during a calendar quarter.

(2) Mailing costs exceeding a total five hundred dollars ($500) during a calendar quarter.

(3) Conferences or other similar events exceeding a total of five hundred dollars ($500) during a calendar quarter.

"**§ 120C-212-214. Reserved for future codification.**

"**§ 120C-215. Publication and availability of registrations.**

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each legislator, constitutional officer as defined in G.S. 138A-3(31)a, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter.

For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(d) All lists required by this section may be furnished electronically.

"Article 3.

"Prohibitions and Restrictions.

"**§ 120C-300. Contingency fees prohibited.**

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

"**§ 120C-301. Election influence prohibited.**

(a) No person shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any covered person by the promise of financial support of the covered person's candidacy, or by threat of financial support in opposition to the covered person's candidacy in any future election.

"**§ 120C-302. Gifts by lobbyists and lobbyist's principals prohibited; exemptions.**

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a covered person.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of G.S. 14-217, G.S. 14-218, or G.S. 120-86.

(d) Violation of this section shall be subject to only civil fines under G.S. 120C-602(b).

"**§ 120C-303. Restrictions.**

(a) No member or former member of the General Assembly may register as a lobbyist under this Chapter within one year after the end of that member's service in the General Assembly.

(b) No person serving as an executive branch official as defined in G.S. 138A-(31)a. or c. may register as a lobbyist under this Chapter within one year after separation from employment or leaving office.

(c) No individual registered as a lobbyist under this Chapter shall serve as a campaign treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(d) A lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a

person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) Any appointment or registration made in violation of this section shall be void.

"**§ 120C-304. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall permit a covered person, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the lobbying expenditure.

"Article 4.

"Reporting.

"**§ 120C-400. Reporting of lobbying expenditures.**

For purposes of this Chapter, all lobbying expenditures as defined in G.S. 120C-100(9) made for the purpose of lobbying shall be reported, including the following:

(1) Lobbying expenditures benefiting or made on behalf of a covered person, or those persons' immediate family members, in the regular course of that person's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a covered person, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Lobbying expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Lobbying expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Lobbying expenditures for items exempted by Article 3 of this Chapter.

"**§ 120C-401. Lobbyist's reports.**

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not lobbying expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following:

(1) All lobbying expenditures during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500) during the reporting period.

c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500) during the reporting period.

(3) A list of all campaign contributions as defined in G.S. 163-278.6 made by the lobbyist during the reporting period to legislators or constitutional officers as defined in G.S. 138A-3(31)a.

(4) All of the following information regarding contributions lawfully made by another under Article 22A of Chapter 163 of the General Statutes but delivered to a clearly identified contributee by the lobbyist during the reporting period:

a. The name of the clearly identified contributee.

b. The total amount delivered by the lobbyist to that clearly identified contributee for that reporting period.

c. The date of delivery to the clearly identified contributee, with a description of the method of delivery.

(c) In addition to the reports required by this section, each lobbyist incurring lobbying expenditures with respect to lobbying legislators and legislative employees shall file a monthly lobbying expenditure report while the General Assembly is in special or regular session. The monthly lobbying expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

(d) Each report shall set forth the fair market value or face value if shown, date, a description of the lobbying expenditure, name and address of the payee, or beneficiary, and name of any covered person, or that person's immediate family member connected with the lobbying expenditure. When more than 15 covered persons benefit from an lobbying expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of covered persons who benefited from the lobbying expenditure shall be listed separately. Such lobbying expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Other lobbying expenditures.

(e) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports,.

(f) When a lobbyist fails to file any report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State

the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(g) Failure to file an lobbying expenditure report in one of the manners prescribed in this section shall void any and all registrations of a lobbyist under this Chapter. No lobbyist may register or reregister under this Chapter until the lobbyist has fully complied with this section.

(h) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(i) The Secretary of State may adopt rules to facilitate complete and timely disclosure of lobbying expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the lobbyist with required notifications of the initial violation. This exception shall not apply to a failure by the lobbyist to file an lobbying expenditure report in a timely manner.

"**§ 120C-402. Lobbyist's principal's reports.**

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not lobbying expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following:

(1) All lobbying expenditures during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500) during the reporting period.

c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500) during the reporting period.

(3) A list of all campaign contributions as defined in G.S. 163-278.6 made by the lobbyist's principal during the reporting period to legislators or constitutional officers as defined in G.S. 138A-3(31)a.

(4) All of the following information regarding contributions lawfully made by another under Article 22A of Chapter 163 of the General Statutes but delivered to a clearly identified contributee by the lobbyist during the reporting period:

a. The name of the clearly identified contributee.

b. The total amount delivered by the lobbyist to that clearly identified contributee for that reporting period.

c. The date of delivery to the clearly identified contributee, with a description of the method of delivery.

(5) Compensation paid to all lobbyists during the reporting period. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(6) Lobbying expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those lobbying expenditures.

(c) In addition to the reports required by this section, each lobbyist principal incurring lobbying expenditures with respect to lobbying legislators and legislative employees shall file a monthly lobbying expenditure report while the General Assembly is in special or regular session. The monthly lobbying expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

(d) Each report shall set forth the fair market value or face value if shown, date, a description of the lobbying expenditure, name and address of the payee, or beneficiary, and name of any covered person, or that person's immediate family member connected with the lobbying expenditure. When more than 15 covered persons benefit from an lobbying expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of covered persons who benefited from the lobbying expenditure shall be listed separately. Such lobbying expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Other lobbying expenditures.

(e) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(f) When a lobbyist's principal fails to file any report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and

payment of the additional fee within the time extended shall constitute compliance with this section.

(g) Failure to file an lobbying expenditure report in one of the manners prescribed in this section shall void any and all registrations of that lobbyist's principal and the registration of the lobbyists with respect to that lobbyist's principal. No lobbyist's principal may register or reregister under this Chapter until the lobbyist's principal has fully complied with this section.

(h) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(i) The Secretary of State may adopt rules to facilitate complete and timely disclosure of lobbying expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the lobbyist's principal with required notifications of the initial violation. This exception shall not apply to a failure by the lobbyist's principal to file an lobbying expenditure report in a timely manner.

"**§ 120C-403. Report availability.**

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes.

"Article 5.

"Liaison Personnel.

"**§ 120C-500. Liaison personnel.**

(a) State departments and constituent institutions of The University of North Carolina shall designate liaison personnel to lobby legislators and legislative employees. No State department or constituent institution of The University of North Carolina may use State funds to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(b) No more than two persons in each State department or constituent institution of The University of North Carolina may be designated as liaison personnel.

"**§ 120C-501. Applicability of chapter on liaison personnel.**

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) The registration under G.S. 120C-200 shall apply to liaison personnel.

(c) The State department or constituent institution of The University of North Carolina shall complete the reports required by G.S. 120C-401.

"Article 6.

"Violations and Enforcement.

"**§ 120C-600. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under this Chapter on a regular basis to assure complete and timely disclosure of reportable lobbying expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable lobbying expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120C-601. Punishment for violation.**

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of this Chapter up to five thousand dollars ($5,000) per violation.

"**§ 120C-602. Enforcement by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Chapter and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the Attorney General for investigation. Any portion of the complaint not involving alleged violations of this Chapter by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(c) Complaints of violations of this Chapter involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney

of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Chapter.

"Article 7.

"Exemptions.

"**§ 120C-700. Persons exempted from this Chapter.**

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a covered person and not acting as a lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more covered persons at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

(4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to covered persons on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes, or is an employee of any news medium while engaged in the acquisition or dissemination of news on behalf of that news medium.

(6) Covered persons while acting in their official capacity.

(7) A person responding to inquiries from a covered person and who engages in no further activities as a lobbyist in connection with that inquiry.

(8) A person participating in any executive action that could be subject to Article 3 or Article 3A of Chapter 150B.

"Article 8.

"Miscellaneous.

"**§ 120C-800. Lobbying expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person accepts an lobbying expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the lobbying expenditure shall report the date, a description of the lobbying expenditure, the name and address of the person, or group of persons, making the lobbying expenditure, the name of the covered

person accepting the lobbying expenditure, and the estimated fair market value of the lobbying expenditure.

(b) If the person making the lobbying expenditure in subsection (a) of this section is outside North Carolina, and the covered person accepting the lobbying expenditure is also outside North Carolina at the time the covered person accepts the lobbying expenditure, then the covered person accepting the lobbying expenditure shall be responsible for filing the report using available information.

(c) If a covered person accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from an extended family member to a covered person.

(3) Gifts associated primarily with the covered person's or that person's immediate family member's employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the lobbying expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"**§ 120C-801. No gift registry.**

(a) The Secretary of State shall establish a "No Gifts" registry for persons subject to this Article. The "No Gifts" registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. ~~120~~120C-215.

(b) Except as provided in this subsection, lobbyists and lobbyists' principals shall not give gifts allowed under G.S. 138A-32(e)(2) to persons placing their names on the registry. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary of State shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) Violations of this section shall not constitute a crime but shall be subject to civil fines of up to five hundred dollars ($500.00) as levied by the Secretary of State."

SECTION 20. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 21. G.S. 120-86.1 reads as rewritten:

"**§ 120-86.1. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in ~~G.S. 120-47.1(4),~~ G.S. 120C-100(8), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

SECTION 22. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~ under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120C-100(10) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~under Chapter 120C of the General Statutes.

SECTION 23.(a) Effective September 1, 2008, The Revisor of Statutes shall change the term "Secretary of State" to "State Ethics Commission" wherever it appears in Chapter 120C of the General Statutes, and G.S. 120C-602(b) and (c) are repealed. Effective September 1, 2008, all personnel and associated funding of those personnel employed with the Secretary of State with respect to Chapter 120C of the General Statutes shall be transferred to the State Ethics Commission.

SECTION 23.(b) Effective September 1, 2008, G.S. 120C-602(b) is repealed.

SECTION 23.(c) Effective September 1, 2008, G.S. 120C-602(c) is repealed.

SECTION 26. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 27. Notwithstanding Page L-3, Item 18, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated in Section 2.1 of S.L. 2006-66 to a Statewide reserve for pending ethics legislation shall be used to establish up to five new positions in the Department of Administration for the North Carolina Board of Ethics to implement this act.

SECTION 28.(a) Persons holding covered positions on January 1, 2007 shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 28.(b) Public servants holding positions on January 1, 2007 shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 24. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 29. Sections 5 through 16 and Sections 19 through 23 of this act become effective January 1, 2007. Sections 17, 18, 24, and 25 of this act are effective when the act becomes law and apply to offenses committed on or after that date. G.S. 120-47.7C(d), as enacted in Section 17 of this act applies to appointments made on or after that date. The remainder of this act becomes effective October 1, 2006, applies to covered persons and legislative employees on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

VISITOR REGISTRATION SHEET

JUDICIARY I — JULY 17, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kat Haney	American Dream Coalition
DARA BAKST	John Locke Fdt.
Leanne Winner	NCSBA
Patrick Bafflin	ALLEY ASSOCIATES INC,
Perry Woods	Self,
[illegible]	CAPA
[illegible]	NC AJA
Caitlin Varney	self
Amy Fner	H&W
John Brubaker	Action Research
Amanda Warren	NC Sierra Club

VISITOR REGISTRATION SHEET

JUDICIARY I — JULY 17, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NCCNP
Tony Adams	NCAA
Michael Houser	NCIAE
Caroline Howe	Lt. Gov's Office
Holly Bowyer	NCATL
Connie Maddox	NCATL
M Binter	N + R
Mark Johnson	The Charlotte Observer
Alice Garland	NCEL

VISITOR REGISTRATION SHEET

JUDICIARY I — JULY 17, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	UNC
ANDY UNWORE	GOV'S OFFICE
Cam Cavey	BPMH&L
	JD, AL, PA
DOUG HERRON	NC BAR ASSOCIATION
Steve Shaber	Poyner & Spruill LLP
Tom West	Poyner + Spruill LLP
	SOS
	Attn General
Kathleen Edwards	UNC-CH Daily Bulletin
	Carey & Assoc.

VISITOR REGISTRATION SHEET

JUDICIARY I — JULY 17, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melanie Thomas	NC SBI 3320 Garner Rd., Raleigh
Colleen Kachaluba	Smith Moore
Jill Shotzberger	ACLU-NC
CP Medlin	NCATL
WP Paley	NCATL
Kevin Leonard	DCSR
Gregg Thompson	NPJB
Rick Zechini	NCAR
Barbara Howe	Libertarian Party of NC
Ed Turlington	BP NAAC
CATHERINE HEATH	AMERICAN DREAM COALITION STOPNCANNEXATION - NC

VISITOR REGISTRATION SHEET

JUDICIARY I — **Name of Committee**

JULY 17, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
William Johnson	Concerned Bikers Assoc. ABATE of NC, Raleigh Chapter
David Goss	Raleigh CBJ
Rob Schofield	NCCNP
[redacted]	
Lauren Rogers	NCFPC
Stephanie Evans	NCFPC
Chris [illegible]	Civitas
[illegible]	NCWM - RANC
[illegible]	GOSK
Cally Wiggins	Gov.'s office
Kathleen Edwards	ANC-CH Daily Bulletin

VISITOR REGISTRATION SHEET

JUDICIARY I — JULY 17, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angela Harris	Maupin Taylor
Rory Rogers	Trigger
John Rust	NCFPC
Paul Meyer	NCACDL
Jim Blackburn	NC Assoc. County Commrs
Roz Savitt	NCCCP

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Tuesday, July 18, 2006

Senator CLODFELTER,
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) **1843** Revise Legislative Ethics Act - 1.

Draft Number:	PCS 80685
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Minutes

Senate Judiciary I Committee
July 18, 2006
Room 1027 Legislative Building
Senator Daniel G. Clodfelter, Chair
9:00 A.M.

The Senate Judiciary I Committee met on Tuesday July 18, 2006 in Room 1027, Legislative Building at 9:00 a.m. Senator Daniel G. Clodfelter presided.

Senator Clodfelter recognized Elaine Marshall, North Carolina Secretary of State who expressed her views on the ethic issues. Secretary Marshall stated that she was here to speak about the transfer of lobbying to the Ethics Board, because of potential conflict of opinions between the Ethics Board, which is Judge Farmer and the Secretary of State's Office. Secretary continued by stated that the Ethics Board and her office have had a good working relationship.

Secretary Marshall stated that they have difficulty staffing lobbying positions. Part of that is because of the scope of what the lobbying law covers. They now have potential changes that increase the universe ten fold from approximately 100 people to about 5,000. Not knowing the scope of the work, makes it difficult to articulate in the lobbying hiring process and the job descriptions, what is the requires are going to be. Secretary Marshall stated further that if you transfer the lobbying process to another agency, you would add more confusion and more difficulty in hiring the quality of people you will need.

Secretary Marshall stated that it is important to the State of North Carolina that there should not be any more uncertainty created to our citizens. She does feel that it is good policy to delete that section now. It should get more consideration, and come back in 07-08 and look at it again. Secretary Marshall continued by stating that if she is allowed to continue with the lobbying process, she pledges to do so without fear and without favor to anyone.

Proposed Committee Substitute for House Bill 1843: State Government Ethics Act - 1
Senator Clodfelter recognized Walter Regan who summarized all of the changes in the proposed committee substitute. Please review the attached proposed committee substitute for details of the following items:

Page 2, Line 40, item (4) – Business with which associated. Please see page 2 and 3 of the Proposed Committee Substitute for details of changes.

Page 4, Lines 19 and 20. Judicial Employee and Judicial Officer.

Page 5, Lines 41 and 42 – Public Event.

Page 6, lines 7 through 10. (f) Public Events Continued. Changes were made in new committee substitute. ***Details are provided in the new proposed committee substitute House Bill 1843 Proposed Committee Substitute Continued***

Page 20 – Statement of Economic Interest, Lines 10 through 15 (c) reads: Notwithstanding subsection (a) of this section, public servants, under G. S. 138A) j. and k., who have submitted a statement of economic interest under subsection (a) of this section, may be hired, appointed or elected provisionally prior to submission by the Commission's evaluation of the statement in accordance with this article, subject to dismissal or removal based on the Commission's evaluation.

Page 21, Lines 39 through 43 (g). 138A-24. Contents of Statement.

Page 22, Lines 22 through 31 m and Line 42 o.138A-24 Contents of Statement

Pages 26 and 27 the word meal was changed to read food.

Page 32, lines 10 and 11 Under 138A – 39 © A decision under this section shall be considered a final decision for contested case purposes under Article 3 of Chapter 150B of the General Statutes.

Page 33, Lines 31 through 33.Section 2 (a) G.S. 150B-1 (d) is amended by adding a new subdivision to read: "(14)) The State Ethic Commissions."

Page 44, Line 37.(7) Legislator – As defined in G.S. 138A-3. Please see detailed information for a description of this item.

Page 47, Lines 22 through 36 -120C-103. Chapter applies to candidates for certain offices. For purposes of this Chapter, the term 'legislator' as defined in G.S. 120C-100(7) and the term 'public servant' as defined in G.S. 138A-3(31)a. shall include a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

120C-200. Lobbyist registration procedure. ***For a detailed description of this item, please see page 47 of the new proposed committee substitute***

Page 45, Line 24. – Lobbying Continued. Please see Page 45 (10) for detailed information.

Page 52 and Page 53. - 120C-402. Lobbyist's Reports. Please see Page and 53 for detailed information.

Page 56, Line 30 through 41.120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter. ***Please see attached detailed information.***

Page 57, Line 14 (f) – Reportable expenditures made by persons exempted or not covered by this Chapter continued. ***Please see detailed information on Page 57.***

There were several amendments brought forward, the amendments adopted were rolled into the new committee substitute.

There being no further discussion, the meeting was adjourned.

Respectfully Submitted By,

Senator Daniel G. Clodfelter, Chairman

Daladier C. Miller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06
Third Edition Engrossed 5/18/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1843-CSRU-104 [v.22]

7/18/2006 1:36:30 AM

Short Title: State Government Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, TO AMEND THE LOBBYING LAWS, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT.

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

"**Chapter 138A.**

"**State Government Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'State Government Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in

carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted shall not be used to advance narrow interests for oneself or others. Self-interest, partiality, and prejudice have no place in decision making for the public good. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, except for those public bodies that have only advisory authority, as determined and designated by the Commission.

(2) Business. – Any of the following for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business in which the person or any member of the person's immediate family does any of the following:

a. Is an employee.

b. Holds a position as an associate, director, officer, business associate, or proprietor, irrespective of the amount of compensation received or the amount of the interest owned.

c. Owns a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever less, in the business.

For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(7) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(8) Confidential information. – Information defined as confidential by the General Statutes.

(9) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(10) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(11) Covered person. – A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.

(12) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(13) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For judicial employees, it is the Chief Justice.

(14) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal ascendant, spouse's lineal descendant, spouse's sibling, and the spouse of any of these persons.

(15) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.

(16) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, or a person described under G.S. 138A-32(d)(1), (2) or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Anything of value given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and not made for the purpose of lobbying.

(17) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(18) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(19) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(20) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.

(21) Legislative action. – As the term is defined in G.S. 120C-100.

(22) Legislative employee. – As the term is defined in G.S. 120C-100.

(23) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(24) Lobbying. – As the term is defined in G.S. 120C-100.

(25) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.

(26) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(27) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(28) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(29) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.

(30) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which all legislators or legislative employees are invited to attend.

b. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which a legislator or legislative employee is invited to attend along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, or a legislative caucus.

c. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, or a legislative caucus and to which at least 10 persons, other than the legislator or legislative employee, or the spouse of the legislator or legislative employee, actually attend.

d. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which at least 10 public servants are invited to attend.

e. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which at least 10 public servants are invited to attend.

f. An organized gathering of a person to which at least 10 public servants are invited to attend and to which at least 10 persons, other than the public servant, or the public servant's spouse, actually attend.

(31) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. Judicial employees.

i. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

k. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative

officer of each community college, and voting members of the boards of trustees of each community college.

l. Members of the Commission.

m. Persons under contract with the State working in or against a position included under this subdivision.

(32) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"State Ethics Commission.

"**§ 138A-6. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-7. Membership.**

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom may be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(3) Two members appointed by the Governor shall serve initial terms of three years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable.

"**§ 138A-8. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Five members of the Commission constitute a quorum.

"**§ 138A-9. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-10. Powers and duties.**

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies and procedures to accomplish the purposes of the Chapter.

(3) Identify and publish the names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(5) Receive and refer complaints of violations against judicial officers and legislators in accordance with G.S. 138A-12.

(6) Investigate alleged violations against public servants in accordance with G.S. 138A-12.

(7) Render advisory opinions in accordance with G.S. 138A-13.

(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants and legislative employees in attending to and performing their duties.

(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(g), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(i), the number of complaints referred for appropriate action under G.S. 138A-12(i) or G.S. 138A-12(l)(3), and the number of complaints pending action by the Commission.

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption of rules, the Committee shall:

(1) Publish the proposed rules in the North Carolina Register at least 30 days prior to the adoption of the rule.
(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.
(3) Notify persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.
(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.
(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this section become effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code.

"**§ 138A-11. Identify and publish names of covered persons and legislative employees.**

The Commission shall identify and publish at least quarterly, a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. This listing may be published electronically on a public internet website maintained by the Commission.

"**§ 138A-12. Investigations by the Commission.**

(a) Jurisdiction. – The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall investigate complaints alleging unethical conduct by covered persons and legislative employees as set forth in this section.

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.
(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-10.
(3) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.
(4) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.
(5) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. –

(1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer or investigate any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the covered person who is the subject of the complaint within 30 days of the filing.

(d) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate investigations upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member

of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(e) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters concerning covered persons or legislative employees other than complaints properly before the Commission under subsection (b) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-13, or referral to appropriate law enforcement or other authorities pursuant to subdivision (l)(1) of this section.

(f) Covered Person and Legislative Employees Cooperation with Investigation. – Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(g) Dismissal of Complaint after Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint.

(h) Commission Investigations. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the investigation and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(i) Action on Investigations. – The Commission shall investigate complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

(1) For public servants and legislative employees, decide to proceed with a hearing under subsection (j) or this section.

(2) For legislators, refer the complaint to the Committee.

(3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, or to the senior resident superior court judge of the district or county for complaints against district attorneys, or to the chief district court judge for the district or county for complaints against clerks of court.

(j) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints received against a public servant or legislative employee. If the Commission determines that the complaint cannot be resolved without

a hearing, or if the public servant or legislative employee requests a hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, and the public servant or legislative employee. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) The Commission shall make available to the public servant or legislative employee prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.

(4) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the public servant or legislative employee requests that the hearing be held in open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The public servant or legislative employee being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(k) Settlement of Investigations. – The public servant or legislative employee who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(l) Disposition of Investigations. – Except as permitted under subsection (g) and (i) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant or legislative employee and notify the employing entity, if applicable.

b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.

d. Refer the matter for appropriate action to the Chief Justice for judicial employees.

e. Refer the matter to the Principal Clerks of the House and Senate of the General Assembly for constitutional officers of the State.

f. Refer the matter to the Legislative Services Commission for legislative employees.

(m) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court.

(n) Findings and Record. – The Commission shall render a written report of a violation of this Chapter made pursuant to complaints or the Commission's investigation. When a matter is referred under subsection (i) or (l) of this section, the Commission's report shall include detailed results of its investigation in support of the Commission's finding of a violation of this Chapter.

(o) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an investigation under this section shall be confidential and not matters of public record, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes sanctions. At such time as sanctions are imposed on a covered person or legislative employee, the complaint, response and Commission's report to the employing entity shall be made public.

(p) Recommendations of Sanctions. – After referring a matter under subsection (l) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's or legislative employee's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servant or legislative employee as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's or legislative employee's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant or legislative employee knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant or legislative employee has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(c).

(9) The public servant's or legislative employee's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant or legislative employee, including removal of the public servant or legislative employee from the public servant's or legislative employee's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(q) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entity to discipline the covered person or legislative employee.

(r) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to continue to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a public servant or legislative employee ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

(s) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(t) Reports. – The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(11).

(u) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission.

"**§ 138A-13. Advisory opinions.**

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except provided in this subsection, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

(1) Investigation by the Committee.

(2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. The immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(d) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all covered persons and legislative employees upon publication.

(e) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not public records.

(g) This section shall not apply to judicial officers.

"**§ 138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons, except judicial officers, and their immediate staffs, and legislative employees, a keen and continuing awareness

of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant, shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment or employment and shall offer periodic refresher presentations as the Commission deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission within three months of the person's election, reelection, appointment, or employment in a manner as the Commission deems appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered person and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

(i) This section shall not apply to judicial officers.

"**§ 138A-15. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(c) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs

may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-16 through 20. [Reserved]**

"Article 3.

"Public Disclosure of Economic Interests.

"**§ 138A-21. Purpose.**

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-22. Statement of economic interest; filing required.**

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(31)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (c) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered

persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Notwithstanding subsection (a) of this section, public servants, under G.S. 138A-3(31)j. and k., who have submitted a statement of economic interest under subsection (a) of this section, may be hired, appointed or elected provisionally prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article, subject to dismissal or removal based on the Commission's evaluation.

(c) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of all candidates who have filed as candidates for offices as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Election under this section.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other covered persons the appropriate forms needed to comply with this Article.

"**§ 138A-23. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"**§ 138A-24. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

(1) The name, home address, occupation, employer, and business of the person.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person, and the filing person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's spouse, including descriptions adequate to determine the location by city and county of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company.

f. The name of each non-publicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

h. For any company or business entity listed under sub-subdivisions f. and g. of this subdivision, list any company or business entity that has any material business dealings, contracts, or other involvement with the State, including a brief description of the business activity.

i. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

j. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.

k. A list of each source (not specific amounts) of income received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains and business income.

l. A list of all non-publicly owned businesses of which the person is an officer, employee, director, business associate, or owner. The list also shall indicate whether each non-publicly owned business does business with or is regulated by the State, and the nature of the business done with the State.

m. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, and a brief description of the nature of the business, if known, or which with due diligence could reasonably be known.

n. An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This sub-subdivision does not apply to a legislator or a judicial officer.

o. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the reporting period under subsection (d) of this section from sources other than the person's extended family. The list required by this sub-subdivision shall not apply

to gifts received by the filing person prior to the time the person filed as a candidate for office, as defined G.S. 138A-22, or was appointed or employed as a covered person.

(3) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty.
c. Corporate law.
d. Criminal law.
e. Decedents' estates.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation.
k. Real property law.
l. Securities law.
m. Taxation.
n. Utilities regulation.

(4) Except for a filing person in compliance under subdivision (3) of this section, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of clients described by type of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(5) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.

(6) A list of any felony convictions of the filing person.

(7) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain

of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) The Supreme Court, Legislative Ethics Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall subject to the provisions of G.S. 138A-25.

(c) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(e) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.

(2) The head of the agency in which the filing person serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The Chief Justice for judicial officers and judicial employees.

(5) The appointing or hiring authority for those public servants not under the Governor's authority.

(6) The State Board of Elections for those filing persons who are elected.

"**§ 138A-25. Failure to file.**

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this

section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-26. Concealing or failing to disclose material information.**

A filing person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-27. Penalty for false or misleading information.**

A filing person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading is guilty of a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-28 through 30. [Reserved]**

"Article 4.

"Ethical Standards for Covered Persons.

"**§ 138A-31. Use of public position for private gain.**

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or a person with whom, or business with which, the covered person or legislative employee is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a director or biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. §501(c)(3). Disclosure of a covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier or client.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, or the Internet, that contains that covered person's

name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fundraising on behalf of and aired on public radio or public television.

"**§ 138A-32. Gifts.**

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal as defined in G.S. 120C-100.

(d) No public servant shall knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

(1) Food and beverages for immediate consumption in connection with public events where the food and beverages are generally provided to other attendees.

(2) Lodging, transportation, entertainment and recreation provided in connection with a public event by a chamber of commerce qualifying under 26 U.S.C. §501(c)(6) to which all legislators are invited when all the things of monetary value are provided within the geographic area represented by the chamber of commerce.

(3) Informational materials relevant to the duties of the covered person, or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person or legislative employee for a meeting at which the covered person or legislative employee participates in a panel or speaking engagement at the meeting related to the covered person's or

legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement. Reasonable travel expenses necessary to attend the meeting and payments for registration and lodging for the 24-hour time periods may be paid in advance. Nothing in this subdivision shall prevent a covered person or legislative employee from arriving before or staying beyond the 24-hour time period at his or her own expense.

(5) Entertainment or recreation provided in connection with a public event sponsored by a charitable organization as defined under G.S. 1-539.11.

(6) Food, beverages, other items, and entertainment received by a public servant in connection with a state, national, or regional organization in which the person's agency is a member or the public servant is a member or participant by virtue of the person's public position, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(7) Food, beverages, other items, and entertainment received by a legislator or legislative employee in connection with a state, regional, or national legislative organization of which the General Assembly is a member or the legislator or legislative employee is a member or participant by virtue of the person's legislative position, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(8) Food, beverages, other items, and entertainment received in connection with an educational conference or meeting, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is incidental to the principal agenda of the conference or meeting.

(9) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(10) Gifts accepted on behalf of the State for the benefit of the State.

(11) Anything generally made available or distributed to the general public or all other State employees, by lobbyists or lobbyist's principals.

(12) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.

(13) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.

(14) Gifts of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed, or provided for consumption among the members and staff of the employing entity or the public.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the

covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, G.S. 14-218, or G.S. 120-86.

"**§ 138A-33. Other compensation.**

A public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties.

"**§ 138A-34. Use of information for private gain.**

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employees extended family, or a person with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or disclose any confidential information not a public record.

"**§ 138A-35. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"**§ 138A-36. Public servant participation in official actions.**

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public

servant's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

"**§ 138A-37. Legislator participation in official actions.**

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has an economic interest in, or may reasonably and foreseeably benefit from the action, if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator

shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104.

"**§ 138A-38. Permitted participation exception.**

Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) Where an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subsection, the Commission shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies, in writing, the Commission that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the

public servant discloses in writing the circumstances and nature of the conflict of interest.

"**§ 138A-39. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) A decision under this section shall be considered a final decision for contested case purposes under Article 3 of Chapter 150B of the General Statutes.

(d) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-40. Employment and supervision of members of covered person's extended family.**

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's extended family, except as specifically authorized by the public servant's employing entity.

"**§ 138A-41. Other ethics standards.**

Nothing in this Chapter shall prevent the Supreme Court, the Legislative Ethics Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in Article 3 of this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the Speaker of the House or of

the General Assembly made by the House upon the recommendation of the Speaker of the House, the Speaker of the House may remove the offending public servant. For appointees of the President Pro Tempore of the Senate or of the General Assembly made by the Senate upon the recommendation of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make or refer to the hiring authority all final decisions on the matter in which the offending legislative employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the Community Colleges System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For all other public servants serving as a State employee, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The State Ethics Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2.(a) G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(14) The State Ethics Commission."

PART II. AMEND LEGISLATIVE ETHICS ACT.

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. G.S. 120-85, G.S. 120-87(b), G.S. 120-88 and Part II of Article 14 of Chapter 120 of the General Statutes are repealed.

SECTION 5. Part 1 of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-85.1. Definitions.**

As used in this Article, the following terms mean:

(1) Business with which associated. – As defined in G.S. 138A-3.

(2) Confidential information. – As defined in G.S. 138A-3.

(3) Economic interest. – As defined in G.S. 138A-3.

(4) Immediate family. – As defined in G.S. 138A-3.

(5) Legislator. – A member or presiding officer of the Genera Assembly.

(6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.

(7) Vested trust. – As defined in G.S. 138A-3."

SECTION 6. G.S. 120-86 reads as rewritten;

"**§ 120-86. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate ~~household,~~family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

~~(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under ~~G.S. 120-103.~~G.S. 120-103.1."

SECTION 7. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ twelve members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 8. G.S. 120-99(c) is repealed.

SECTION 9. G.S. 120-101 reads as rewritten:

"**§ 120-101. Quorum; expenses of members.**

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 10. G.S. 120-102 reads as rewritten:

"**§ 120-102. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~may:

~~(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~

~~(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~

~~(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~

~~(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.~~

(5) ~~To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.~~Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) ~~To advise~~Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) ~~To propose~~Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt rules to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 11. G.S. 120-103 is repealed.

SECTION 12. Part III of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-103.1. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section, initiate an investigation of a complaint or dismiss the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee may:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint after Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsection (g) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written

request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (c) of this section, the complaint, response, records and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members."

SECTION 13. G.S 120-104 reads as rewritten:

"**§ 120-104. Advisory opinions.**

(a) At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. ~~These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall accept and review advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13. The Committee may modify or overrule the advisory opinions issued to legislators by the State Ethics Commission and the opinion of the Committee shall control. The Committee shall provide the Commission with the advisory opinion modified or overruled by the Committee, and the Commission shall publish the Committee's opinion under G.S. 138A-13(e). The failure of the Committee to modify or overrule an advisory opinion issued to a legislator by the State Ethics Commission shall constitute ratification of the State Ethics Commission's advisory opinion for purposes of the immunity granted under G.S. 138A-13(a).

(c) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(d) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators by rules, and these interpretations are binding on all legislators upon publication.

(e) The Committee shall publish its advisory opinions issued separately from the State Ethics Commission at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (e) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission, are confidential and not matters of public record."

SECTION 14. G.S. 120-105 reads as rewritten:

"**§ 120-105. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as ~~sections to cover the administrative branch of government and~~ Chapter 138A of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 15. G.S. 143B-350, reads as rewritten:

"**§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

...

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary.~~the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall:~~shall include

~~(1)~~ ~~Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

~~(2)~~ ~~Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~(3)~~ ~~Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board~~

~~members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in ~~nature~~nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, ~~the North Carolina Board of Ethics,~~ the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

...."

PART III. AMEND LOBBYING LAWS.

SECTION 16.(a) G.S. 120-47.7C as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 16.(b) G.S. 120-47.7C as enacted by Section 1(a) of this act reads as rewritten:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly or member of the Council of State may be employed as ~~an executive or~~ a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within six months ~~after the end of that member's service in the General Assembly.~~after the end of the term to which the member was elected or appointed.

(b) No person serving as ~~Governor, as a member of the Council of State, or as~~ a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or~~ a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one ~~after~~year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General ~~Assembly.~~Assembly or Council of State.

(d) A legislative ~~or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing

that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative ~~or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, ~~executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 16.(c) G.S. 120-47.7C as enacted by this act is repealed effective January 1, 2007.

SECTION 17.(a) G.S. 120-47.7B as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 17.(b) G.S. 120-47.7B as enacted by this act is repealed effective January 1, 2007.

SECTION 18.(a) Article 9A of Chapter 120 of the General Statutes is repealed.

SECTION 18.(b) The General Statutes are amended by adding a new Chapter to read:

"**Chapter 120C.**

"**Lobbying.**

"Article 1.

"General Provisions.

"**§ 120C-100. Definitions.**

(a) As used in this Article, the following terms mean:

(1) Designated individual. – A legislator, legislative employee, or public servant.

(2) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person or another person on that person's behalf with respect to any of the following:

1. Applying for a permit, license, determination of eligibility, or certification.

2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.

3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.

c. Internal administrative functions, including those functions exempted from the definition of 'rule' in G.S. 150B-2(8a).
d. Ministerial functions.
e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting or submitted as written comment, on a proposed executive action in response to a request for public comment, provided identity of the person on whose behalf the comments are made is disclosed as part of the public participation and no reportable expenditure is made.

(3) In session. – One of the following:
a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
1. Adjourns sine die.
2. Recesses or adjourns for more than 10 days.
b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
1. Adjourns sine die.
2. Recesses or adjourns for more than 10 days.

(4) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(5) Legislative employee. – Employees and officers of the General Assembly.

(6) Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.

(7) Legislator. – As defined in G.S. 138A-3.

(8) Lobbying. – Any of the following:
a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family.
b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention

of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications, activities, or monies spent as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(9) Lobbyist. – An individual who engages in lobbying and meets any of the following criteria:

a. Is employed by a person for the intended purpose of lobbying.

b. Is employed by a person and a significant part of that individual's duties include lobbying. For purposes of this sub-subdivision, a significant part of an individual's duties is deemed to be any portion of more than five calendar days in a calendar year.

c. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.

d. Contracts for economic consideration for the purpose of lobbying.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

(10) Lobbyist principal and principal. – The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

(11) News medium. – Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(12) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.

b. A contract, agreement, promise or other obligation whether or not legally enforceable.

(13) Solicitation of others. – The petition or request of the general public to influence legislative or executive action, or both by a lobbyist, lobbyists' principal or other person, except communication between the lobbyist, lobbyist's principal or other person and the lobbyist's principal's or other person's stockholders, employees, board members, officers, members, subscribers, or other persons who have affirmatively assented to receive the lobbyist's principal's or other person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter.

"**§ 120C-101. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"**§ 120C-102. Advisory opinions.**

(a) At the request of any person affected by this Chapter, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120C-103. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity

to situations that might result in real or potential violation of this Chapter or other related laws. The Secretary of State shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Secretary of State deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Secretary of State within six months of the person's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Secretary of State deems appropriate. Upon request, the Secretary of State shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary of State shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary of State shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals, upon request.

"§ 120C-103. Chapter applies to candidates for certain offices.

For purposes of this Chapter, the term 'legislator' as defined in G.S. 120C-100(7) and the term 'public servant' as defined in G.S. 138A-3(31)a. shall include a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

"Article 2.

"Registration.

"§ 120C-200. Lobbyist registration procedure.

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Chapter within one business day of engaging in any lobbying as defined by G.S. 120C-100(8).

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall

file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120C-201. Lobbyist's registration fee.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted non-profit status under 26 U.S.C. 501(c)(3).

"**§ 120C-202-205. Reserved for future codification.**

"**§ 120C-206. Lobbyist's principal's authorization.**

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

"**§ 120C-207. Lobbyist's principal's fees.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist's principals that have been granted non-profit status under 26 U.S.C. 501(c)(3).

"**§ 120C-208-210. Reserved for future codification.**

"**§ 120C-215. Other persons required to register.**

(a) A person incurring an expense for solicitation of others as defined in G.S. 120C-100(13) shall register and report under this Chapter when the expense is one of the following:

(1) Media costs exceeding a total of one thousand dollars ($1000) during any 90-day period.

(2) Mailing costs exceeding a total five hundred dollars ($500.00) during any 90-day day period.

(3) Conferences, meetings, or other similar events exceeding a total of five hundred dollars ($500.00) during any 90-day period.

(b) A person required to register and report under this section shall be referred to as a 'solicitor' for purposes of this Chapter.

"**§ 120C-216-219. Reserved for future codification.**

"**§ 120C-220. Publication and availability of registrations.**

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically.

"Article 3.

"Prohibitions and Restrictions.

"**§ 120C-300. Contingency fees prohibited.**

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

"**§ 120C-301. Election influence prohibited.**

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

"**§ 120C-302. Campaign contributions prohibition.**

No lobbyist or lobbyist's principal may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(31)a.

"**§ 120C-303. Gifts by lobbyists and lobbyist's principals prohibited.**

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a designated individual.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, G.S. 14-218, or G.S. 120-86, but shall be subject to civil fines under G.S. 120C-601(b).

"**§ 120C-304. Restrictions.**

(a) No legislator or former legislator and no public servant or former public servant as defined in G.S. 138A-3(31)a. may register as a lobbyist under this Chapter within six months after the end of the term to which the member was elected or appointed.

(b) No person serving as a public servant as defined in G.S. 138A-3(31)c. may register as a lobbyist under this Chapter within one year after separation from employment or leaving office.

(c) No individual registered as a lobbyist under this Chapter shall serve as a campaign treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(d) A lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State within 60 days after the expiration of the lobbyist's registration. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) Any appointment or registration made in violation of this section shall be void.

"**§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure.

"Article 4.

"Reporting.

"**§ 120C-400. Reporting of reportable expenditures.**

For purposes of this Chapter, all reportable expenditures, as defined in G.S. 120C-100(12), made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that individual's employment.
(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that person's immediate family member, in effect during the reporting period or the previous 12 months.
(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer.
(4) Reportable expenditures for gifts exempted by Article 3 of this Chapter.

"**§ 120C-401. Reporting generally.**

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) Each report shall set forth the fair market value or face value if shown, date, a description of the reportable expenditure, name and address of the payee, or beneficiary, and name of any designated individual, or that person's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(c) Reportable expenditures shall be reported using the following categories:
(1) Transportation and lodging.
(2) Entertainment.
(3) Food and beverages.
(4) Meetings and events.
(5) Gifts.
(6) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist's principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist's principal, or solicitor. No lobbyist, lobbyist's principal, or solicitor may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist's principal, or solicitor for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

"**§ 120C-402. Lobbyist's reports.**

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall include all of the following:

(1) All reportable expenditures made for the purpose of lobbying during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences, meetings, or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

(3) Reportable expenditures reimbursed by the lobbyist's principal, or another person on the lobbyist's principal's behalf.

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report while the General Assembly is in session. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly reportable expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-403. Lobbyist's principal's reports.**

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following:

(1) All reportable expenditures made for the purpose of lobbying during the reporting period.
(2) Solicitation of others when such solicitation involves:
a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.
b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.
c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.
(3) Compensation paid to all lobbyists during the quarter. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.
(4) Reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report while the General Assembly is in session. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-404. Solicitor's reports.**

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:
(1) All reportable expenditures made for the purpose of lobbying during the reporting period.
(2) Solicitation of others when such solicitation involves:
a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.
b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.
c. Conferences, meeting, or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

"**§ 120C-405. Report availability.**

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes.

"Article 5.
"Liaison Personnel.

"§ 120C-500. Liaison personnel.

(a) All agencies and constitutional officers of the State, including all boards, commissions, departments, divisions, councils, constituent institutions of The University of North Carolina and other units of government in the executive branch, except local units of government, shall designate liaison personnel to lobby legislators and legislative employees.

(b) No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(c) No more than two persons may be designated as liaison personnel for each agency and constitutional officers of the State, including all boards, commissions, departments, divisions, councils, constituent institutions of The University of North Carolina, and other units of government in the executive branch.

"§ 120C-501. Applicability of chapter on liaison personnel.

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) The registration under G.S. 120C-200 shall apply to liaison personnel.

(c) The reports required by G.S. 120C-402 shall be completed and filed as required by that section.

"Article 6.
"Violations and Enforcement.

"§ 120C-600. Powers and duties of the Secretary of State.

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"§ 120C-601. Punishment for violation.

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of this Chapter up to five thousand dollars ($5,000) per violation.

"**§ 120C-602. Enforcement by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Chapter and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the Attorney General for investigation. Any portion of the complaint not involving alleged violations of this Chapter by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(c) Complaints of violations of this Chapter involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Chapter.

"Article 7.

"Exemptions.

"**§ 120C-700. Persons exempted from this Chapter.**

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

(4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes, or is an employee of any news medium while engaged in the acquisition or dissemination of news on behalf of that news medium.

(6) Designated individuals while acting in their official capacity.

(7) A person responding to inquiries from a designated individual and who engages in no further activities as a lobbyist in connection with that inquiry.

"Article 8.

"Miscellaneous.

"**§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.**

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(c) If a designated individual accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
(2) Any gift from an extended family member to a designated individual.
(3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment.
(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.
(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the reportable expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest."

SECTION 19. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 20. G.S. 120-86.1 reads as rewritten:

"**§ 120-86.1. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in ~~G.S. 120-47.1(4),~~ G.S. 120C-100(4), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

SECTION 21. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~ under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120C-100(10) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~under Chapter 120C of the General Statutes.

SECTION 22. Effective September 1, 2008, The Revisor of Statutes shall change the term "Secretary of State" to "State Ethics Commission" wherever it appears in Chapter 120C of the General Statutes. Effective September 1, 2008, all personnel and associated funding of those personnel employed with the Secretary of State with respect to Chapter 120C of the General Statutes shall be transferred to the State Ethics Commission.

SECTION 23. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 24. Notwithstanding Page L-3, Item 18, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated in Section 2.1 of S.L. 2006-66 to a Statewide reserve for pending ethics legislation shall be used to establish up to five new positions in the Department of Administration for the North Carolina Board of Ethics to implement this act.

SECTION 25.(a) Persons holding covered positions on January 1, 2007 shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 25.(b) Public servants holding positions on January 1, 2007 shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 26. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid. If G.S. 120C-302 as enacted by Section 18 of this act is declared unconstitutional or invalid by the courts, it shall be repealed.

SECTION 27. Sections 4 through 15 and Sections 18 through 22 of this act become effective January 1, 2007, and G.S. 120C-304 as enacted by Section 18 of this act applies to appointments made on or after that date. Sections 16, 17, 26, and 27 of this act are effective when the act becomes law and apply to offenses committed on or after that date. G.S. 120-47.7C (d), as enacted in Section 16 of this act applies to appointments made on or after that date. The remainder of this act becomes effective October 1, 2006, applies to covered persons and legislative employees on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-ARU-80 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1843-CSRU-104 [V.20]

Senator Hoyle

moves to amend the bill on page 5, lines ~~41 through~~ 43, by rewriting the lines to read: "SPOUSE OF THE LEGISLATOR OR LEGISLATIVE EMPLOYEE, ACTUALLY ATTEND, OR

"~~committee, or a legislative caucus~~" to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend."; and

On page 6, lines ~~8 through~~ 10, by rewriting the lines to read: ACTUALLY ATTEND, OR

"~~servants are invited to attend and~~" to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-ARU-80 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1843-CSRU-104 [V.20]

Senator Hoyle

moves to amend the bill on page 5,lines 41 through 43, by rewriting the lines to read:

"committee, or a legislative caucus to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend."; and

On page 6, lines 8 through 10, by rewriting the lines to read:

"servants are invited to attend and to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-ARU-80 [v.1]

Date _____ ,2006

Comm. Sub. [YES]
Amends Title [NO]
H1843-CSRU-104 [V.20]

Senator Hoyle

moves to amend the bill on page 5, lines ~~41 through~~ 43, by rewriting the lines to read: "SPOUSE OF THE LEGISLATOR OR LEGISLATIVE EMPLOYEE, ACTUALLY ATTEND, OR

"~~committee, or a legislative caucus~~ to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend."; and

On page 6, lines ~~8 through~~ 10, by rewriting the lines to read: ACTUALLY ATTEND, OR

"~~servants are invited to attend and~~ to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1843-AST-184 [v.1]

Date _____,2006

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

Senator Rand

moves to amend the bill on page 56, lines 12-13 by inserting the following between those lines:

"(8) A person who is a political committee as defined in G.S. 163-278.6(14)a. or b., that person's employee, or that person's contracted service provider.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

adopted

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE 7-18-06

S. B. No. _____ Amendment No. #3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1843-CSRV-104[v.22]

Rep.) Sen. RANO

1 moves to amend the bill on page 33, line 6
2 ( ) WHICH CHANGES THE TITLE
3 by INSERTING BETWEEN THE WORDS "SERVANT." AND "FOR"
4 THE FOLLOWING NEW SENTENCE TO READ
5 "FOR PUBLIC SERVANTS ELECTED TO A BOARD BY
6 EITHER THE SENATE OR HOUSE OF REPRESENTATIVE, THE
7 ELECTING HOUSE OF THE GENERAL ASSEMBLY SHALL
8 EXERCISE THE DISCRETION OF WHETHER TO REMOVE
9 THE OFFENDING PUBLIC SERVANT."
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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

H1843-AST-178 [v.2]

Date _____,2006

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

Senator Brunstetter

moves to amend the bill on page 48, lines 2-3, by inserting the following between those lines:

"(e) Each lobbyist shall identify himself or herself as a lobbyist prior to engaging in lobbying communications or activities with a designated individual. The lobbyist shall also disclose the identity of the lobbyist's principal connected to that lobbying communication or activity.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

adopted

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE 18 JULY 06

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

COMMITTEE SUBSTITUTE V22

Rep.) Brunstetter
)
Sen.)

1 moves to amend the bill on page 23, line 26
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the words "clients described by type" and
4 inserting the word "categories" in its place
5
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

AMENDMENT NO. #5
(to be filled in by
Principal Clerk)

H1843-AST-182 [v.1]

Date _____,2006

Comm. Sub. [NO]
Amends Title [NO]
H843-CSRU-104

Senator Nesbitt

moves to amend the bill on page 57, lines 16 by inserting the following at the end of that line:

"(g) For purposes of this section, the term 'scholarship' shall mean a grant-in-aid to attend a conference, meeting or other similar event.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

adopted

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE 18 JULY 06

S. B. No. _____ Amendment No. 6
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE V22

Rep.) Brunstetter
)
Sen.)

moves to amend the bill on page 23, line 26

( ) WHICH CHANGES THE TITLE

by deleting the words "clients described by type" and inserting the word "categories" in its place

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE 18 JULY 06

S. B. No. _____ Amendment No. 6
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE V22

Rep.) Brunstetter
)
Sen.)

1 moves to amend the bill on page 23, line 26
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the words "clients described by type" and
4 inserting the word "categories" in its place
5
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE 7/18/06

S. B. No. _____ Amendment No. #7

COMMITTEE SUBSTITUTE V22 (to be filled in by Principal Clerk)

Rep.)
Sen.) Cowell

moves to amend the bill on page 52, line 32

( ) WHICH CHANGES THE TITLE

by and on page 53 line 18 by inserting the following between "expenditures" and "with" on those lines:

"in any month while the General Assembly is in session";

and on page 52, lines 33-34 and on page 53 lines 19-20 by deleting the phrase "while the General Assembly is in session".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE July 18, 2006

S. B. No. _____ Amendment No. 7 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE V.22 7/18/06 1:36 am.

Rep.) Janet Cowell

Sen.)

1 moves to amend the bill on page 52, line 33

2 ( ) WHICH CHANGES THE TITLE

3 by striking "while the General Assembly is in session"

4 and reinserting it at the end of line 32, so that it

5 reads, "each lobbyist incurring reportable expenditures

6 with respect to lobbying legislators and legislative

7 employees while the General Assembly is in session

shall file a monthly reportable expenditure report."

9

10 this same change should be made on pg. 53, line 18-20.

11

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17 adopted

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19

SIGNED Janet Cowell

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE July 18, 2006

S. B. No. _____ Amendment No. 7 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE V.22 7/18/06 1:36 am.

Rep.) Janet Cowell

Sen.)

moves to amend the bill on page 52, line 33

( ) WHICH CHANGES THE TITLE

by striking "while the General Assembly is in session" and reinserting it at the end of line 32, so that it reads, "each lobbyist incurring reportable expenditures with respect to lobbying legislators and legislative employees while the General Assembly is in session shall file a monthly reportable expenditure report."

this same change should be made on pg. 53, line 18-20.

Displaced

SIGNED Janet Cowell

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

AMENDMENT NO. 8
(to be filled in by
Principal Clerk)

H1843-AST-169 [v.5]

Date _____,2006

Comm. Sub. [NO]
Amends Title [NO]
PCS

Senator Berger of Rockingham

moves to amend the bill on page 49, line 42 through page 50, line5 by deleting those lines;

and on page 57, lines 28-29 by inserting the following between those lines:

"**SECTION 21.1.** G.S. 163-278.6 is amended by adding a new subsection to read:

"**§ 163-278.6. Definitions.**

When used in this Article:

...

(5a) The term 'Constitutional officers of the State' means officers whose offices are established in Article III of the Constitution.

..."

SECTION 21.2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section G.S. 163-278.19A to read:

"**§ 163-278.13C. Limitation on contributions by registered lobbyists.**

(a) No lobbyist registered under Chapter 120C of the General Statutes shall do any of the following:

(1) Make or offer to make a contribution to a legislator, executive branch official, or candidate campaign committee.

(2) Make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a legislator, executive branch official, or candidate campaign committee.

(3) Transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to

contribute to a legislator, executive branch officer, or candidate campaign committee.

(4) Solicit a contribution from any individual, political committee, or other entity on behalf of a legislator, executive branch official, or candidate campaign committee. This subdivision does not apply to a registered lobbyist soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(5) Deliver any contribution made by another to a legislator, executive branch officer, or candidate campaign committee.

(b) No legislator, executive branch official, or candidate campaign committee or the real or purported agent of that legislator, executive branch official, or candidate campaign committee shall do any of the following:

(1) Solicit a contribution from a lobbyist registered under Chapter 120C of the General Statutes.

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a lobbyist registered under Chapter 120C of the General Statutes or relay to the lobbyist registered under Chapter 120C of the General Statutes the legislator's, executive branch official's, or candidate campaign committee's solicitation of a contribution.

(3) Accept a contribution from a lobbyist registered under Chapter 120C of the General Statutes.

(c) It shall not be deemed a violation of this section for a legislator or executive branch official to serve on a board or committee of an organization that makes a solicitation of a lobbyist registered under Chapter 120C of the General Statutes as long as that legislator or executive branch official does not directly participate in the solicitation and that legislator or executive branch official does not directly benefit from the solicitation.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-170 [v.4]

Date _____,2006

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

Senator Berger of Rockingham

moves to amend the bill on page 57, lines 13-14 by inserting the following between those lines:

"**SECTION 18.5.** Subchapter VIII of Chapter 163 is amended to add a new Article 22M to read:

"**Article 22M.**

"**Legal Assistance Funds.**

"**§163-278.300. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – The State Board of Elections.

(2) Contribution. –As defined in G.S. 163-278.6.

(3) Elected officer. – Any individual holding elected office in this State.

(4) Legal assistance fund. – Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.

(5) Person. – An individual.

(6) Treasurer. – An individual appointed by an elected officer or other person or group of persons collecting money for a legal assistance fund.

"**§ 163-278.301. Creation of legal assistance funds.**

(a) An elected official, or another person or group of persons on the elected official's behalf, may create a legal assistance fund.

(b) If a legal assistance fund is created, the legal assistance fund shall comply with all provisions of this Article.

(c) A violation of this Article shall be punishable as a Class 2 misdemeanor.

"**163-278.302. Appointment of treasurer.**

(a) Each legal assistance fund shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1), a statement of organization that includes the following:

(1) The name, address and purpose of the legal assistance fund.

(2) The names, addresses, and relationships of affiliated or connected elected officials, candidates, political committees, referendum committees, political parties, or similar organizations.

(3) The name, address, and position with the legal assistance fund of the custodian of books and accounts.

(4) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(5) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer.

(6) Any other information which might be requested by the Board that deals with the legal assistance fund organization.

G.S. 163-278.102(b), and a report of all contributions and expenditures not previously reported

(2) Quarterly Reports. – The treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter.

(b) Any report or attachment filed under subsection (e) of this section must be certified.

(c) Treasurers shall electronically file each report required by this section that shows a cumulative total for the election cycle in excess of five thousand dollars ($5,000) in contributions, in expenditures, or in loans, according to rules adopted by State Board. The Board shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer.

"**§ 163-278.305-309. Reserved for future codification.**

"**§ 163-278.310. Limitation on contributions.**

No legal assistance fund or it's treasurer shall accept any contribution made by any corporation, labor union, insurance company, professional association, or other business entity, regardless of whether such corporation does business in the State of North Carolina. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

"**§ 163-278.311-315. Reserved for future codification.**

"**§ 163-278.316. Permitted uses of legal assistance funds.**

A legal assistance fund may be used for reasonable expenses actually incurred by the elected official in relation to a legal action or potential legal action brought by or against the elected official. Upon completion of the legal action or potential legal action, the remaining monies in the legal assistance fund shall be distributed to either the Indigent

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-169 [v.5]

(d) This section shall not prohibit a lobbyist registered under Chapter 120C of the General Statutes from advising a political committee that employs or contracts with or whose parent entity employs or contracts with that lobbyist or from advising members of that political committee with regard to contributions to a legislator, executive branch official or candidate campaign committee.

(e) This section shall not apply to a lobbyist filing a notice of candidacy for office as a member of the General Assembly or a Constitutional officer of the State making a contribution to that lobbyist.

(f) As used in this section, the following terms mean:

(1) Candidate campaign committee. – As defined in G.S. 163-278.38Z and that candidate has filed a notice of candidacy for office as a member of the General Assembly or a Constitutional officer of the State.

(2) Executive branch official. – As defined in G.S. 138A-32(a).

(3) Legislator. – As defined in G.S. 120C-100.

(g) A violation of this section is punishable by a civil fine in accordance with G.S. 163-278.34 only.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-170 [v.4]

Persons' Attorney Fee Fund or to the North Carolina State Bar for the provision of civil legal services for indigents.

"**§ 163-278.317-320. Reserved for future codification.**".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

AMENDMENT NO. 9
(to be filled in by Principal Clerk)

H1843-AST-171 [v.3]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1843-CSRU-104 [v.20]

Senator Berger of Rockingham

moves to amend the bill on page 12, lines 30 through 40 by rewriting the lines to read:

"(i) Action on Investigations. – The Commission shall conduct a full investigation of complaints. Upon completion of the investigation, the Commission shall do one of the following:

(1) Dismiss the complaint.

(2) For public servants and legislative employees, decide to proceed with a hearing under subsection (j) or this section.

(3) For legislators, refer the complaint to the Committee.

(4) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, or to the senior resident superior court judge of the district or county for complaints against district attorneys and to the chief district court judge for the district or county for complaints against clerks of court.";

and

On page 14, lines 15 through 19, by rewriting the lines to read:

"(n) Findings and Record. – The Commission shall render a written report of a violation of this Chapter made pursuant to complaints or the Commission's investigation. The report shall include a detailed findings of fact of the alleged violations. When a matter is referred under subsection (i) or (l) of this section, the

disposed Withdrew

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

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

H1843-AST-171 [v.3]

Commission's report shall include detailed results of its investigation in support of the Commission's finding of a violation of this Chapter.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE 7-18-06

S. B. No. _____ Amendment No. 10
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Soles
Sen.)

moves to amend the bill on page 47, lines 32 - 33

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"be unlawful for a person to lobby without registering ~~[illegible]~~ within one business day of engaging in any lobbying as defined in G.S. 120C-100(8), unless exempted by this Chapter."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Study
Withdrew
Chapter

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1843

AMENDMENT NO. 11
(to be filled in by Principal Clerk)

H1843-AST-170 [v.4]

Date _____,2006

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

Senator Berger of Rockingham

moves to amend the bill on page 57, lines 13-14 by inserting the following between those lines:

"**SECTION 18.5.** Subchapter VIII of Chapter 163 is amended to add a new Article 22M to read:

"**Article 22M.**

"**Legal Assistance Funds.**

"**§163-278.300. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – The State Board of Elections.

(2) Contribution. –As defined in G.S. 163-278.6.

(3) Elected officer. – Any individual holding elected office in this State.

(4) Legal assistance fund. – Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.

(5) Person. – An individual.

(6) Treasurer. – An individual appointed by an elected officer or other person or group of persons collecting money for a legal assistance fund.

"**§ 163-278.301. Creation of legal assistance funds.**

(a) An elected official, or another person or group of persons on the elected official's behalf, may create a legal assistance fund.

(b) If a legal assistance fund is created, the legal assistance fund shall comply with all provisions of this Article.

(c) A violation of this Article shall be punishable as a Class 2 misdemeanor.

"**163-278.302. Appointment of treasurer.**

(a) Each legal assistance fund shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1), a statement of organization that includes the following:

(1) The name, address and purpose of the legal assistance fund.

(2) The names, addresses, and relationships of affiliated or connected elected officials, candidates, political committees, referendum committees, political parties, or similar organizations.

(3) The name, address, and position with the legal assistance fund of the custodian of books and accounts.

(4) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(5) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer.

(6) Any other information which might be requested by the Board that deals with the legal assistance fund organization.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within 10 calendar days following the change.

(d) A legal assistance fund may remove its treasurer. In case of the death, resignation or removal of its treasurer before compliance with all obligations of a treasurer under this Article, such legal assistance fund shall appoint a successor within 10 calendar days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a legal assistance fund shall receive, training from the Board as to the duties of the office.

"**§ 163-278.303. Detailed accounts to be kept by political treasurers.**

(a) The treasurer of each legal assistance fund shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the legal assistance fund.

(b) Accounts kept by the treasurer of a legal assistance fund or the accounts of a treasurer or legal assistance fund at any bank or other depository, may be inspected by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of fifty dollars ($50.00) or less but shall instead report the fact that the treasurer has received a total contribution of fifty dollars ($50.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of fifty dollars ($50.00) or less, each at a single event, the treasurer may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event.

(d) With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any legal assistance fund related services or goods, if the price or value received for any single service or goods exceeds fifty dollars ($50.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt. If the

price or value received for any single service or item of goods does not exceed fifty dollars ($50.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed fifty dollars ($50.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt.

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The Board shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The Board shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

"**§ 163-278.304. Statements filed with Board.**

(a) The treasurer of each legal assistance fund shall file with the Board under certification of the treasurer as true and correct to the best of the knowledge of that officer the following reports:

(1) Organizational Report. – The appointment of the treasurer as required by G.S. 163-278.102(a), the statement of organization required by

G.S. 163-278.102(b), and a report of all contributions and expenditures not previously reported

(2) Quarterly Reports. – The treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter.

(b) Any report or attachment filed under subsection (e) of this section must be certified.

(c) Treasurers shall electronically file each report required by this section that shows a cumulative total for the election cycle in excess of five thousand dollars ($5,000) in contributions, in expenditures, or in loans, according to rules adopted by State Board. The Board shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer.

"**§ 163-278.305-309. Reserved for future codification.**

"**§ 163-278.310. Limitation on contributions.**

No legal assistance fund or it's treasurer shall accept any contribution made by any corporation, labor union, insurance company, professional association, or other business entity, regardless of whether such corporation does business in the State of North Carolina. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

"**§ 163-278.311-315. Reserved for future codification.**

"**§ 163-278.316. Permitted uses of legal assistance funds.**

A legal assistance fund may be used for reasonable expenses actually incurred by the elected official in relation to a legal action or potential legal action brought by or against the elected official. Upon completion of the legal action or potential legal action, the remaining monies in the legal assistance fund shall be distributed to either the Indigent

Persons' Attorney Fee Fund or to the North Carolina State Bar for the provision of civil legal services for indigents.

"**§ 163-278.317-320. Reserved for future codification.**".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE 7-18-06

S. B. No. _____ Amendment No. #12
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1843-CSRV-104 [v.22]

Rep.) RAND
(Sen.)

1 moves to amend the bill on page 26, line 1
2 ( ) WHICH CHANGES THE TITLE
3 by INSERTING BETWEEN THE WORDS "EMERGENCY" AND
4 "AND" THE WORDS "OR TO ENSURE PUBLIC SAFETY";
5
6 AND ON PAGE 25, LINE 21, BY DELETING
7 THE WORDS "OR A PERSON WITH WHOM,"
8
9
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16
17
18
19

SIGNED Tom Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1843 DATE 7-18-06

S. B. No. 1 Amendment No. #13
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H 1843 - CSRV - 104 [v.2Z]

Rep.) RAND
Sen.)

1 moves to amend the bill on page ~~25~~ 58, lines ~~27~~ 1 - 6

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE LINES, AND RENUMBERING THE

4 REMAINING SECTIONS ACCORDINGLY.

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SIGNED Tim Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

JUDICIARY 1 — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Carter	NC Bar Assoc.
Jill Shotzberger	ACLU-NC
John Phelps	NCLM
Chris Hayes	Civitas
George Sudbath	NCBEW
Bruce Thompson	PARKER POE
Tracy Kimbrell	Parker Poe.
Chris Heyns	NCCUS

VISITOR REGISTRATION SHEET

JUDICIARY 1 — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angela Holmes	NCCCS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06
Third Edition Engrossed 5/18/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1843-CSRU-104 [v.19]

7/17/2006 4:36:35 PM

Short Title: State Government Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, TO AMEND THE LOBBYING LAWS, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT.

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

"**Chapter 138A.**

"**State Government Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'State Government Ethics Act.'

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed officials must maintain and exercise the highest standards of duty to the public in

carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted shall not be used to advance narrow interests for oneself or others. Self-interest, partiality, and prejudice have no place in decision making for the public good. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, except for those public bodies that have only advisory authority, as determined and designated by the Commission.

(2) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business in which the person or any member of the person's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated

investment company, or pension or deferred compensation plan, if all of the following apply:

a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(7) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(8) Confidential information. – Information defined as confidential by the General Statutes.

(9) Constitutional officers of the State. – Officers whose offices are established by Article III of the Constitution.

(10) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(11) Covered person. – A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.

(12) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(13) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For judicial employees, it is the Chief Justice.

(14) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal ascendant, spouse's lineal descendant, spouse's sibling, and the spouse of any of these persons.

(15) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.

(16) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, or a person described under G.S. 138A-32(d)(1), (2) or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.
b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.
c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
d. Academic or athletic scholarships made on terms not more favorable than scholarships generally available to the public.
e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
f. Anything of value given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and not made for the purpose of lobbying.

(17) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(18) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(19) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(20) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.

(21) Legislative action. – As the term is defined in G.S. 120C-100.

(22) Legislative employee. – As the term is defined in G.S. 120C-100.

(23) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(24) Lobbying. – As the term is defined in G.S. 120C-100.

(25) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate

family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.

(26) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(27) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(28) Pecuniary interest. – Any of the following:

a. Owning a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving during the preceding calendar year, compensation that is or will be required to be included as taxable income on federal income tax returns of the person, the person's immediate family, or a business with which the person is associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the person, the person's immediate family, or a business with which associated.

c. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received or the amount of the interest owned.

(29) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(30) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.

(31) Public event. – Either of the following:

a. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which all legislators or legislative employees are invited to attend.

b. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which a legislator or legislative employee is invited to attend along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, or a legislative caucus.

c. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a joint committee, or a legislative caucus and to which all stockholders, employees, board members, officers, members, or subscribers of the person are notified and invited to attend.

d. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which at least 10 public servants are invited to attend.

e. An organized gathering of a governmental body subject to the open meetings law and to which at least 10 public servants are invited to attend.

f. An organized gathering of a person to which at least 10 public servants are invited to attend and to which all stockholders, employees, board members, officers, members, or subscribers of the person are notified and invited to attend.

(32) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. Judicial employees.

i. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina,

the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

k. For the Community Colleges System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community Colleges System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

l. Members of the Commission.

m. Persons under contract with the State working in or against a position included under this subdivision.

(33) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 138A-4 and 138A-5. [Reserved]**

"Article 2.

"State Ethics Commission.

"**§ 138A-6. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-7. Membership.**

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom may be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(3) Two members appointed by the Governor shall serve initial terms of three years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable.

"**§ 138A-8. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Five members of the Commission constitute a quorum.

"**§ 138A-9. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-10. Powers and duties.**

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies and procedures to accomplish the purposes of the Chapter.

(3) Identify and publish the names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(5) Receive and refer complaints of violations against judicial officers and legislators in accordance with G.S. 138A-12.

(6) Investigate alleged violations against public servants in accordance with G.S. 138A-12.

(7) Render advisory opinions in accordance with G.S. 138A-13.

(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants and legislative employees in attending to and performing their duties.

(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(g), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(i), the number of complaints referred for appropriate action under G.S. 138A-12(i) or G.S. 138A-12(l)(3), and the number of complaints pending action by the Commission.

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

"**§ 138A-11. Identify and publish names of covered persons and legislative employees.**

The Commission shall identify and publish at least quarterly, a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. This listing may be published electronically on a public internet website maintained by the Commission.

"**§ 138A-12. Investigations by the Commission.**

(a) Jurisdiction. – The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall investigate complaints alleging unethical conduct by covered persons and legislative employees as set forth in this section.

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-10.

(3) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.

(4) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.

(5) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. –

(1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within one year of the date the

complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer or investigate any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the covered person who is the subject of the complaint within 30 days of the filing.

(d) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate investigations upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(e) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters concerning covered persons or legislative employees other than complaints properly before the Commission under subsection (b) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-13, or referral to appropriate law enforcement or other authorities pursuant to subdivision (l)(1) of this section.

(f) Covered Person and Legislative Employees Cooperation with Investigation. – Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(g) Dismissal of Complaint after Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint.

(h) Commission Investigations. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the investigation and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(i) Action on Investigations. – The Commission shall investigate complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

(1) For public servants and legislative employees, decide to proceed with a hearing under subsection (j) or this section.

(2) For legislators, refer the complaint to the Committee.

(3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, or to the senior resident superior court judge of the district or county for complaints against district attorneys and clerks of court.

(j) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints received against a public servant or legislative employee. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant or legislative employee requests a hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, and the public servant or legislative employee. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) The Commission shall make available to the public servant or legislative employee prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.

(4) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the public servant or legislative employee requests that the hearing be held in open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The public servant or legislative employee being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(k) Settlement of Investigations. – The public servant or legislative employee who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(l) Disposition of Investigations. – Except as permitted under subsection (g) and (i) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant or legislative employee and notify the employing entity, if applicable.

b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.

d. Refer the matter for appropriate action to the Chief Justice for judicial employees.

e. Refer the matter to the Principal Clerks of the House and Senate of the General Assembly for constitutional officers of the State.

f. Refer the matter to the Legislative Services Commission for legislative employees.

(m) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior

court judge of the district or county for complaints against district attorneys and clerks of court.

(n) Findings and Record. – The Commission shall render a written report of a violation of this Chapter made pursuant to complaints or the Commission's investigation. When a matter is referred under subsection (i) or (l) of this section, the Commission's report shall include detailed results of its investigation in support of the Commission's finding of a violation of this Chapter.

(o) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an investigation under this section shall be confidential and not matters of public record, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes sanctions. At such time as sanctions are imposed on a covered person or legislative employee, the complaint, response and Commission's report to the employing entity shall be made public.

(p) Recommendations of Sanctions. – After referring a matter under subsection (l) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's or legislative employee's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servant or legislative employee as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.

(2) The number of ethics violations.

(3) The severity of the ethics violations.

(4) Whether the ethics violations involve the public servant's or legislative employee's financial interests or arise from an appearance of conflict of interest.

(5) Whether the ethics violations were inadvertent or intentional.

(6) Whether the public servant or legislative employee knew or should have known that the improper conduct was a violation of this Chapter.

(7) Whether the public servant or legislative employee has previously been advised, warned, or sanctioned by the Commission.

(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(c).

(9) The public servant's or legislative employee's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission

may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant or legislative employee, including removal of the public servant or legislative employee from the public servant's or legislative employee's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(q) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entity to discipline the covered person or legislative employee.

(r) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to continue to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a public servant or legislative employee ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

(s) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(t) Reports. – The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(11).

(u) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission.

"**§ 138A-13. Advisory opinions.**

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except as set forth in subsection (b) of this section, reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from both of the following:

(1) Investigation by the Commission.
(2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except provided in this subsection, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

(1) Investigation by the Committee.
(2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. The immunity granted under this subsection shall not apply if the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(d) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all covered persons and legislative employees upon publication.

(e) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not public records.

(g) This section shall not apply to judicial officers.

"**§ 138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons, except judicial officers, and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant, shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection,

appointment or employment and shall offer periodic refresher presentations as the Commission deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission within three months of the person's election, reelection, appointment, or employment in a manner as the Commission deems appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered person and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

(i) This section shall not apply to judicial officers.

"**§ 138A-15. Duties of heads of State agencies.**

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(c) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the

attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§ 138A-16 through 20. [Reserved]**

"Article 3.

"Public Disclosure of Economic Interests.

"**§ 138A-21. Purpose.**

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-22. Statement of economic interest; filing required.**

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(32)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (c) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under

G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(d) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(e) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of all candidates who have filed as candidates for offices as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Election under this section.

(f) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other covered persons the appropriate forms needed to comply with this Article.

"**§ 138A-23. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"**§ 138A-24. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and by the filing person's immediate family:

(1) The name, home address, occupation, employer, and business of the person.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person, and the filing person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's spouse, including descriptions adequate to determine the location by city and county of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company.

f. The name of each non-publicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, a list any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

h. For any company or business entity listed under sub-subdivisions f. and g. of this subdivision, list any company or business entity that has any material business dealings, contracts, or other involvement with the State, including a brief description of the business activity.

i. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

j. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.

k. A list of each source (not specific amounts) of income received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains and business income.

l. A list of all non-publicly owned businesses of which the person is an officer, employee, director, business associate, or owner. The list also shall indicate whether each non-publicly owned

business does business with or is regulated by the State, and the nature of the business done with the State.

m. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, and a brief description of the nature of the business.

n. An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This sub-subdivision does not apply to a legislator or a judicial officer.

o. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the reporting period under subsection (b) of this section from sources other than the person's extended family. The list required by this sub-subdivision shall not apply to gifts received by the filing person prior to the time the person filed as a candidate for office, as defined G.S. 138A-22, or was appointed or employed as a covered person.

(3) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty.
c. Corporate law.
d. Criminal law.
e. Decedents' estates.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation.
k. Real property law.
l. Securities law.

m. Taxation.
n. Utilities regulation.

(4) Except as provided under subdivision (3) of this section, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of clients described by type of business and the nature of services rendered, for which payment for services were charged or paid during any single year of the past five years in excess of ten thousand dollars ($10,000).

(5) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.

(6) A list of any felony convictions of the filing person.

(7) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) The Supreme Court, Legislative Ethics Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall subject to the provisions of G.S. 138A-25.

(c) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(e) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.

(2) The head of the agency in which the filing person serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The Chief Justice for judicial officers and judicial employees.

(5) The appointing or hiring authority for those public servants not under the Governor's authority.

(6) The State Board of Elections for those filing persons who are elected.

"**§ 138A-25. Failure to file.**

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-26. Concealing or failing to disclose material information.**

A filing person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-27. Penalty for false or misleading information.**

A filing person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading is guilty of a Class H felon and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-28 through 30. [Reserved]**

"Article 4.

"Ethical Standards for Covered Persons.

"**§ 138A-31. Use of public position for private gain.**

(a) A covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in any manner that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or a person

with whom, or business with which, the covered person or legislative employee is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a director or biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. §501(c)(3). Disclosure of a covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier or client.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, or the Internet, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fundraising on behalf of and aired on public radio or public television.

"**§ 138A-32. Gifts.**

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal as defined in G.S. 120C-100.

(d) No public servant shall knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events where the meals and beverages are generally provided to other attendees.

(2) Lodging, transportation, entertainment and recreation provided in connection with a public event by a chamber of commerce qualifying under 26 U.S.C. §501(c)(6) to which all legislators are invited when all the things of monetary value are provided within the geographic area represented by the chamber of commerce.

(3) Informational materials relevant to the duties of the covered person, or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person or legislative employee for a meeting at which the covered person or legislative employee participates in a panel or speaking engagement at the meeting related to the covered person's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement. Reasonable travel expenses necessary to attend the meeting and payments for registration and lodging for the 24-hour time periods may be paid in advance. Nothing in this subdivision shall prevent a covered person or legislative employee from arriving before or staying beyond the 24-hour time period at his or her own expense.

(5) Entertainment or recreation provided in connection with a public event sponsored by a charitable organization as defined under G.S. 1-539.11.

(6) Items, services and entertainment received by a public servant in connection with a state, national, or regional organization in which the person's agency is a member or the public servant is a member by virtue of the person's public position, provided the items, services, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(7) Items, services and entertainment received by a legislator or legislative employee in connection with a state, regional, or national legislative organization of which the General Assembly is a member or the legislator or legislative employee is a member by virtue of the person's

legislative position, provided the items, services, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(8) Items, services, and entertainment received in connection with an educational conference or meeting, provided the items, services, or entertainment are made available to other attendees and the entertainment is incidental to the principal agenda of the conference or meeting.

(9) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(10) Gifts accepted on behalf of the State for the benefit of the State.

(11) Anything generally made available or distributed to the general public or all other State employees, by lobbyists or lobbyist's principals.

(12) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.

(13) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is meals and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible gift, other than meals or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.

(14) Gifts of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission,

and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed, or provided for consumption among the members and staff of the employing entity or the public.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a thing of value for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, G.S. 14-218, or G.S. 120-86.

"**§ 138A-33. Other compensation.**

A public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties.

"**§ 138A-34. Use of information for private gain.**

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employees extended family, or a person with whom or business with which the public servant or legislative employee is associated. A public servant or

legislative employee shall not improperly use or disclose any confidential information not a public record.

"**§ 138A-35. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"**§ 138A-36. Public servant participation in official actions.**

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

"**§ 138A-37. Legislator participation in official actions.**

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or may reasonably and foreseeably benefit from the action, if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual pecuniary or economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104.

"**§ 138A-38. Permitted participation exception.**

Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only pecuniary interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) Where an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the

Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subsection, the Commission shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies, in writing, the Commission that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

"**§ 138A-39. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-40. Employment and supervision of members of covered person's extended family.**

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public

servant's extended family, except as specifically authorized by the public servant's employing entity.

"**§ 138A-41. Other ethics standards.**

Nothing in this Chapter shall prevent the Supreme Court, the Legislative Ethics Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

"**§ 138A-42 through 44. [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in Article 3 of this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the General Assembly made either by the House or upon the recommendation of the Speaker of the House, the Speaker of the House may remove the offending public servant. For appointees of the General Assembly made either by the Senate or upon the recommendation of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. Except for employees of State departments headed by a member of the Council of State, employees of the Judicial Department and or legislative employees, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make all final decisions on the matter in which the offending legislative employee shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The State Ethics Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2. G.S. 150B-21.1(a) is amended by adding a new subdivision to read:

"(17) The need for the State Ethics Commission to interpret and implement the ethical standards for covered persons as provided in Article 4 of Chapter 138A of the General Statutes."

PART II. AMEND LEGISLATIVE ETHICS ACT.

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. G.S. 120-85, G.S. 120-87(b), G.S. 120-88 and Part II of Article 14 of Chapter 120 of the General Statutes are repealed.

SECTION 5. Part 1 of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-85.1. Definitions.**

As used in this Article, the following terms mean:

(1) Business with which associated. – As defined in G.S. 138A-3.

(2) Confidential information. – As defined in G.S. 138A-3.

(3) Economic interest. – As defined in G.S. 138A-3.

(4) Immediate family. – As defined in G.S. 138A-3.

(5) Legislator. – A member or presiding officer of the Genera Assembly.

(6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.

(7) Vested trust. – As defined in G.S. 138A-3."

SECTION 6. G.S. 120-86 reads as rewritten;

"**§ 120-86. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate ~~household,~~family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

~~(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under ~~G.S. 120-103.~~G.S. 120-103.1."

SECTION 7. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ twelve members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 8. G.S. 120-99(c) is repealed.

SECTION 9. G.S. 120-101 reads as rewritten:

"**§ 120-101. Quorum; expenses of members.**

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 10. G.S. 120-102 reads as rewritten:

"**§ 120-102. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~may:

~~(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~

~~(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~

~~(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~

~~(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.~~

(5) ~~To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.~~Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) ~~To advise~~Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) ~~To propose~~Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt rules to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 11. G.S. 120-103 is repealed.

SECTION 12. Part III of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-103.1. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section, initiate an investigation of a complaint or dismiss the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee may:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint after Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsection (g) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (c) of this section, the complaint, response, records and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members."

SECTION 13. G.S 120-104 reads as rewritten:

"**§ 120-104. Advisory opinions.**

(a) At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. ~~These~~

~~advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall accept and review advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13. The Committee may modify or overrule the advisory opinions issued to legislators by the State Ethics Commission and the opinion of the Committee shall control. The Committee shall provide the Commission with the advisory opinion modified or overruled by the Committee, and the Commission shall publish the Committee's opinion under G.S. 138A-13(e). The failure of the Committee to modify or overrule an advisory opinion issued to a legislator by the State Ethics Commission shall constitute ratification of the State Ethics Commission's advisory opinion for purposes of the immunity granted under G.S. 138A-13(a).

(c) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(d) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators by rules, and these interpretations are binding on all legislators upon publication.

(e) The Committee shall publish its advisory opinions issued separately from the State Ethics Commission at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (e) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission, are confidential and not matters of public record."

SECTION 14. G.S. 120-105 reads as rewritten:

"**§ 120-105. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as ~~sections to cover the administrative branch of government and~~ Chapter 138A of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 15. G.S. 143B-350, reads as rewritten:

"**§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

...

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in

the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary.~~ the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall:~~ shall include

~~(1)~~ ~~Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's

position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

~~(2) Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~(3) Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in ~~nature~~ nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, ~~the North Carolina Board of Ethics,~~ the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

...."

PART III. AMEND LOBBYING LAWS.

SECTION 16.(a) G.S. 120-47.7C as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 16.(b) G.S. 120-47.7C as enacted by Section 1(a) of this act reads as rewritten:

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly or member of the Council of State may be employed as ~~an executive or~~ a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within six months ~~after the end of that member's service in the General Assembly.~~after the end of the term to which the member was elected or appointed.

(b) No person serving as ~~Governor, as a member of the Council of State, or as~~ a head of a principal State department listed in G.S. 143B-6 may be employed as ~~an executive or~~ a legislative lobbyist by a lobbyist's principal to lobby as defined in this Article ~~or Article 4C of Chapter 147 of the General Statutes~~ within ~~six months~~one ~~after~~year after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General ~~Assembly.~~Assembly or Council of State.

(d) A legislative ~~or executive~~ lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative ~~or executive~~ lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, ~~executive branch officer,~~ or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure."

SECTION 16.(c) G.S. 120-47.7C as enacted by this act is repealed effective January 1, 2007.

SECTION 17.(a) G.S. 120-47.7B as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 17.(b) G.S. 120-47.7B as enacted by this act is repealed effective January 1, 2007.

SECTION 18.(a) Article 9A of Chapter 120 of the General Statutes is repealed.

SECTION 18.(b) The General Statutes are amended by adding a new Chapter to read:

"**Chapter 120C.**

"**Lobbying.**

"Article 1.

"General Provisions.

"**§ 120C-100. Definitions.**

(a) As used in this Article, the following terms mean:

(1) Designated individual. – A legislator, legislative employee, or public servant.

(2) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person or another person on that person's behalf with respect to any of the following:

1. Applying for a permit, license, determination of eligibility, or certification.

2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.

3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.

c. Internal administrative functions, including those functions exempted from the definition of 'rule' in G.S. 150B-2(8a).

d. Ministerial functions.

e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting or submitted as written comment, on a proposed executive action in response to a request for public comment, provided identity of the person on whose behalf the comments are made is disclosed as part of the public participation and no reportable expenditure is made.

(3) In session. – One of the following:

a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

(4) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill,

resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(5) Legislative employee. – Employees and officers of the General Assembly.

(6) Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.

(7) Legislator. – A member or presiding officer of the General Assembly, a person elected or appointed a member or presiding officer of the General Assembly prior to taking office, or a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

(8) Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications, activities, or monies spent as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(9) Lobbyist. – An individual who engages in lobbying and meets any of the following criteria:

a. Is employed by a person for the intended purpose of lobbying.

b. Is employed by a person and a significant part of that individual's duties include lobbying. For purposes of this sub-subdivision, a significant part of an individual's duties is deemed to be any portion of more than five calendar days in a calendar year.

c. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.

d. Contracts for economic consideration for the purpose of lobbying.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700.

(10) Lobbyist principal and principal. – The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

(11) News medium. – Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(12) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.

b. A contract, agreement, promise or other obligation whether or not legally enforceable.

(13) Solicitation of others. – The petition or request of the general public to influence legislative or executive action, or both by a lobbyist, lobbyists' principal or other person, except communication between the lobbyist, lobbyist's principal or other person and the lobbyist's principal's or other person's stockholders, employees, board members, officers, members, subscribers, or other persons who have affirmatively assented to receive the lobbyist's principal's or other person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter.

"**§ 120C-101. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated

that commitment or decision to the State or local government agency involved with the project.

"**§ 120C-102. Advisory opinions.**

(a) At the request of any person affected by this Chapter, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120C-103. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Secretary of State shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Secretary of State deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Secretary of State within six months of the person's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Secretary of State deems appropriate. Upon request, the Secretary of State shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary of State shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary of State shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made

available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals, upon request.

"Article 2.

"Registration.

"**§ 120C-200. Lobbyist registration procedure.**

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Chapter within one business day of engaging in any lobbying as defined by G.S. 120C-100(8).

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120C-201. Lobbyist's registration fee.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted non-profit status under 26 U.S.C. 501(c)(3).

"**§ 120C-202-205. Reserved for future codification.**

"**§ 120C-206. Lobbyist's principal's authorization.**

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

"**§ 120C-207. Lobbyist's principal's fees.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist's principals that have been granted non-profit status under 26 U.S.C. 501(c)(3).

"**§ 120C-208-210. Reserved for future codification.**

"**§ 120C-215. Other persons required to register.**

(a) A person incurring an expense for solicitation of others as defined in G.S. 120C-100(14) shall register and report under this Chapter when the expense is one of the following:

(1) Media costs exceeding a total of one thousand dollars ($1000) during any 90-day period.

(2) Mailing costs exceeding a total five hundred dollars ($500.00) during any 90-day day period.

(3) Conferences, meetings, or other similar events exceeding a total of five hundred dollars ($500.00) during any 90-day period.

(b) A person required to register and report under this section shall be referred to as a 'solicitor' for purposes of this Chapter.

"**§ 120C-216-219. Reserved for future codification.**

"**§ 120C-220. Publication and availability of registrations.**

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically.

"Article 3.

"Prohibitions and Restrictions.

"**§ 120C-300. Contingency fees prohibited.**

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

"**§ 120C-301. Election influence prohibited.**

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

"**§ 120C-302. Campaign contributions prohibition.**

No lobbyist or lobbyist's principal may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(32)a.

"**§ 120C-303. Gifts by lobbyists and lobbyist's principals prohibited.**

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a designated individual.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, G.S. 14-218, or G.S. 120-86, but shall be subject to civil fines under G.S. 120C-601(b).

"**§ 120C-304. Restrictions.**

(a) No legislator or former legislator and no public servant or former public servant as defined in G.S. 138A-3(32)a. may register as a lobbyist under this Chapter within six months after the end of the term to which the member was elected or appointed.

(b) No person serving as a public servant as defined in G.S. 138A-3(32)c. may register as a lobbyist under this Chapter within one year after separation from employment or leaving office.

(c) No individual registered as a lobbyist under this Chapter shall serve as a campaign treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(d) A lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State within 60 days after the expiration of the lobbyist's registration. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) Any appointment or registration made in violation of this section shall be void.

"**§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure.

"Article 4.

"Reporting.

"**§ 120C-400. Reporting of reportable expenditures.**

For purposes of this Chapter, all reportable expenditures as defined in G.S. 120C-100(12) made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that person's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer. Reportable expenditures reimbursed by the lobbyist's principal or other employer are reported only by the lobbyist.

(4) Reportable expenditures for gifts exempted by Article 3 of this Chapter.

"**§ 120C-401. Reporting generally.**

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) Each report shall set forth the fair market value or face value if shown, date, a description of the reportable expenditure, name and address of the payee, or beneficiary, and name of any designated individual, or that person's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General

Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(c) Reportable expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports,.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist's principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist's principal, or other person required to register under this Chapter. No lobbyist, lobbyist's principal, or other person required to register under this Chapter may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist's principal, or other person required to report under this Chapter for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

"**§ 120C-402. Lobbyist's reports.**

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall include all of the following:

(1) All reportable expenditures during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report while the General Assembly is in special or regular session. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-403. Lobbyist's principal's reports.**

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following:

(1) All reportable expenditures during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

(3) Compensation paid to all lobbyists during the reporting period. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(4) Reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report while the General Assembly is in special or regular session. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-404. Solicitor's reports.**

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:

(1) All reportable expenditures during the reporting period.
(2) Solicitation of others when such solicitation involves:
a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.
b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.
c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

"**§ 120C-405. Report availability.**

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes.

"Article 5.

"Liaison Personnel.

"**§ 120C-500. Liaison personnel.**

(a) All agencies and officers in the executive branch, including all public servants as defined in G.S. 138A-3(32)a., c., i., j., and k., boards, commissions, departments, divisions, councils, and other units of government in the executive branch, except local units of government, shall designate liaison personnel to lobby legislators and legislative employees. No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(b) No more than two persons may be designated as liaison personnel for each agency or officer in the executive branch, including all public servants as defined in G.S. 138A-3(32)a., c., i., j., and k., boards, commissions, departments, divisions, councils, and other units of government in the executive branch.

"**§ 120C-501. Applicability of chapter on liaison personnel.**

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) The registration under G.S. 120C-200 shall apply to liaison personnel.

(c) The agency or officer in the executive branch, including all public servants as defined in G.S. 138A-3(32)a., c., i., j., and k., boards, commissions, departments, divisions, councils, and other units of government in the executive branch, shall complete the reports required by G.S. 120C-401.

"Article 6.

"Violations and Enforcement.

"**§ 120C-600. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under

this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120C-601. Punishment for violation.**

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of this Chapter up to five thousand dollars ($5,000) per violation.

"**§ 120C-602. Enforcement by Attorney General.**

(a) The Secretary of State may investigate complaints of violations of this Chapter and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the Attorney General for investigation. Any portion of the complaint not involving alleged violations of this Chapter by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the District Attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(c) Complaints of violations of this Chapter involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the District Attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The District Attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Chapter.

"Article 7.

"Exemptions.

"**§ 120C-700. Persons exempted from this Chapter.**

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

(4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes, or is an employee of any news medium while engaged in the acquisition or dissemination of news on behalf of that news medium.

(6) Designated individuals while acting in their official capacity.

(7) A person responding to inquiries from a designated individual and who engages in no further activities as a lobbyist in connection with that inquiry.

"Article 8.

"Miscellaneous.

"**§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.**

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report using available information.

(c) If a designated individual accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not

covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from an extended family member to a designated individual.

(3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the reportable expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

SECTION 19. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 20. G.S. 120-86.1 reads as rewritten:

"**§ 120-86.1. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in ~~G.S. 120-47.1(4),~~ G.S. 120C-100(4), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

SECTION 21. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~ under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120C-100(10) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~under Chapter 120C of the General Statutes.

SECTION 22. Effective September 1, 2008, The Revisor of Statutes shall change the term "Secretary of State" to "State Ethics Commission" wherever it appears in Chapter 120C of the General Statutes. Effective September 1, 2008, all personnel and associated funding of those personnel employed with the Secretary of State with respect to Chapter 120C of the General Statutes shall be transferred to the State Ethics Commission.

SECTION 23. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 24. Notwithstanding Page L-3, Item 18, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated in Section 2.1 of S.L. 2006-66 to a Statewide reserve for pending ethics legislation shall be used to establish up to five new positions in the Department of Administration for the North Carolina Board of Ethics to implement this act.

SECTION 25.(a) Persons holding covered positions on January 1, 2007 shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 25.(b) Public servants holding positions on January 1, 2007 shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 26. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid. If G.S. 120C-302 as enacted by Section 19 of this act is declared unconstitutional or invalid by the courts, it shall be repealed.

SECTION 27. Sections 4 through 15 and Sections 18 through 22 of this act become effective January 1, 2007, and G.S. 120C-304 as enacted by Section 18 of this act applies to appointments made on or after that date. Sections 16, 17, 26, and 27 of this act are effective when the act becomes law and apply to offenses committed on or after that date. G.S. 120-47.7C (d), as enacted in Section 16 of this act applies to appointments made on or after that date. The remainder of this act becomes effective October 1, 2006, applies to covered persons and legislative employees on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06
Third Edition Engrossed 5/18/06

Short Title: Revise Legislative Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LEGISLATIVE ETHICS ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 120 of the General Statutes is repealed.

SECTION 2. Chapter 120 of the General Statutes is amended by adding a new article to read:

"Article 32.

"Legislative Ethics Act.

"Part 1. General Provisions.

"**§ 120-280. Title.**

This Article shall be known and may be cited as the 'Legislative Ethics Act.'

"**§ 120-281. Definitions.**

The following definitions apply in this Article:

(1) Business. – Any of the following, whether or not for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(2) Business associate. – A partner, or member or manager of a limited liability company.

(3) Business with which associated. – A business in which the legislator or any member of the legislator's immediate family has a pecuniary interest. For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded or the fund's assets are widely diversified.

(4) Committee. – The Legislative Ethics Committee.

(5) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Article 163 of the General Statutes.

(6) Confidential information. – Information defined as confidential by statute.

(7) Contract. – Any agreement including sales and conveyances of real and personal property and agreements for the performance of services.

(8) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(9) Extended family. – Spouse, descendant, ascendant, or sibling of the legislator or, descendant, ascendant, or sibling of the spouse of the legislator.

(10) Immediate family. – An unemancipated child of the legislator residing in the household, and the legislator's spouse, if not legally separated.

(11) Legislative action. – As the term is defined in G.S. 120-47.1.

(12) Legislative employee. – As the term is defined in G.S. 120-47.1.

(13) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(14) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee or independent contractor as of December 31 of the preceding year.

(15) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(16) Pecuniary interest. – Any of the following:

a. Owning, either individually or collectively, a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, of any business.

b. Receiving, either individually or collectively, during the preceding calendar year compensation that is or will be required to be included as taxable income on federal income tax returns of the legislator, the legislator's immediate family, or a business with which associated in an aggregate amount of five thousand dollars ($5,000) from any business or combination of businesses. A pecuniary interest exists in any client or customer who pays fees or commissions, either individually or collectively, of five thousand dollars ($5,000) or more in the preceding 12 months to the legislator, the legislator's immediate family, or a business with which associated.

c. Receiving, either individually or collectively and directly or indirectly, in the preceding 12 months, gifts or honoraria having an unknown value or having an aggregate value of five hundred dollars ($500.00) or more from any person. A pecuniary interest does not exist under this sub-subdivision by reason of (i) a gift or bequest received as the result of the death of the donor; (ii) a gift from an extended family member; or (iii) acting as a trustee of a trust for the benefit of another.

d. Holding the position of associate, director, officer, business associate, or proprietor of any business, irrespective of the amount of compensation received.

(17) Public event. – An organized gathering of individuals open to the general public or to which a legislator or legislative employee is invited along with the entire membership of the House, the Senate, a committee, a subcommittee, a county legislative delegation, a joint committee or a legislative caucus and to which at least ten employees or members of the principal actually attend.

(18) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the legislator or a member of the legislator's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The legislator or a member of the legislator's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 120-282 through 120-285. [Reserved]**

"Part 2. Ethical Standards for Legislators.

"**§ 120-286. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the business associate, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(c) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(d) It shall be unethical for a legislator to contact the business associate, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(e) A violation of subsection (a), (b), or (c) of this section is a Class F felony. A violation of subsection (d) of this section is not a crime but is punishable under G.S. 120-325.

"**§ 120-287. Use of public position for private gain.**

(a) A legislator shall not knowingly use the legislator's public position in any manner that will result in financial benefit, direct or indirect, to the legislator, a member of the legislator's extended family, or a person with whom, or business with which, the legislator is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a legislator that the legislator would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the legislator's ability to protect the public interest and perform the legislator's official duties would not be compromised.

(b) A legislator shall not mention or permit another person to mention the legislator's public position in nongovernmental advertising that advances the private interest of the legislator or others. The prohibition in this subsection shall not apply to political advertising, news stories or news articles.

(c) No legislator shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that legislator's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to their official function. This

subsection shall not apply to fundraising on behalf of and aired on public radio or public television.

"**§ 120-288. Disclosure of confidential information.**

No legislator shall use or disclose in any way confidential information gained in the course of the legislator's official activities or by reason of the legislator's official position that could result in financial gain for the legislator or any other person.

"**§ 120-289. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding the hiring, promotion, grievance, or disciplinary action of a State employee subject to Chapter 126 of the General Statutes. It shall be unethical for a legislator to take, promise, or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding the hiring, promotion, grievance, or disciplinary action of an employee of any unit of local government.

"**§ 120-290. Gifts.**

(a) A legislator shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the legislator, or for another person, in return for being influenced in the discharge of the legislator's official responsibilities, other than that which is received by the legislator from the State for acting in the legislator's official capacity.

(b) No legislator or legislative employee shall knowingly accept anything of monetary value, directly or indirectly, from a legislative lobbyist or principal as defined in G.S. 120-47.1 or an executive lobbyist or principal as defined in G.S. 147-54.31.

(c) Subsection (b) of this section shall not apply to any of the following:

(1) Meals and beverages for immediate consumption in connection with public events.

(2) Nonmonetary items, other than food or beverages, with a value not to exceed ten dollars ($10.00) provided by a single donor during a single calendar day.

(3) Informational materials relevant to the duties of the legislator or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the legislator or legislative employee for a meeting at which the legislator or legislative employee participates in a panel or speaking engagement at the meeting related to the legislator's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement.

(5) Items or services received in connection with a state, regional or national legislative organization of which the General Assembly, the legislator or legislative employee is a member by virtue of the person's legislative position.

(6) Items and services received relating to an educational conference or meeting.

(7) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
(8) Gifts accepted on behalf of the State.
(9) Anything generally available or distributed to the general public or all other State employees.
(10) Anything for which fair market value is paid by the legislator or legislative employee.
(11) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.
(12) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
(13) Academic scholarships made on terms not more favorable than scholarships generally available to the public.
(14) Political contributions properly received and reported as required under Article 22A of Article 163 of the General Statutes.
(15) Gifts from the legislator's or the legislative employee's extended family, or a member of the same household of the legislator or the legislative employee, or gifts received in conjunction with a marriage, birth, adoption, or death.

(d) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and immediately donated to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed or provided for consumption among the entire staff or the public.

(e) A legislative employee shall not accept an honorarium from a source other than the General Assembly for conducting any activity where any of the following apply:

(1) The General Assembly reimburses the public servant for travel, subsistence, and registration expenses.
(2) The General Assembly's work time or resources are used.
(3) The activity would be considered official duty or would bear a reasonably close relationship to the legislative employee's official duties.

An outside source may reimburse the General Assembly for actual expenses incurred by a legislative employee in conducting an activity within the duties of the legislative employee, or may pay a fee to the General Assembly, in lieu of an honorarium, for the services of the legislative employee.

(f) The offering, giving, soliciting or receiving a thing of value in compliance with this section without corrupt intent shall not constitute a violation of G.S. 120-286, G.S. 14-217 or G.S. 14-218.

"**§ 120-291. Other rules of conduct.**

(a) A legislator shall make a due and diligent effort before taking any action, including voting or participating in discussions with other legislators, to determine

whether the legislator has a conflict of interest. If the legislator is unable to determine whether or not a conflict of interest may exist, the legislator has a duty to inquire of the Committee as to that conflict.

(b) A legislator shall continually monitor, evaluate, and manage the legislator's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A legislator shall obey all other civil laws, administrative requirements and criminal statutes governing conduct of State government appointees and employees.

"**§ 120-292. Participation in legislative actions.**

(a) Except as permitted by subsection (c) of this section, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has a pecuniary or economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the legislator's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the legislator's participation in the legislative action. A potential benefit includes a detriment to (i) a business competitor of the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated.

(b) A legislator described in subsection (a) of this section shall abstain from participation in the legislative action. The legislator shall submit in writing the reasons for the abstention to the principal clerk of the house of which the legislator is a member.

(c) Notwithstanding subsection (a) of this section, a legislator may participate in a legislative action under any of the following circumstances:

(1) The only pecuniary or economic interest or reasonably foreseeable benefit that accrues to the legislator, the legislator's extended family, or business with which the legislator is associated as a member of a profession, occupation, or large class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or large class.

(2) Where a legislative action affects or would affect the legislator's compensation and allowances as a legislator.

(3) Before the legislator participated in the legislative action, the legislator requested and received a written advisory opinion from the Committee that authorized the participation. In authorizing the participation under this subsection, the Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) When action is ministerial only and does not require the exercise of discretion.

(5) When a legislative body records in its minutes that it cannot obtain a quorum in order to take the legislative action because legislators are disqualified from acting under this section.

"**§ 120-293. Employment of members of legislator's extended family.**

A legislator shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the legislator to a State or local office or

position, except for positions at the General Assembly as permitted by the Legislative Services Commission.

"**§ 120-294 through 299. [Reserved]**

"Part 3. Legislative Ethics Committee.

"**§ 120-300. Legislative Ethics Committee established.**

There is established the Legislative Ethics Committee.

"**§ 120-301. Membership.**

(a) The Legislative Ethics Committee shall consist of twelve members, six Senators appointed by the President Pro Tempore of the Senate, among them – three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader, and six members of the House of Representatives appointed by the Speaker of the House, among them – three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Committee during each odd-numbered year, and the cochair appointed by the Speaker of the House shall preside during each even-numbered year. However, a cochair may preside at any time during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Committee, and so indicates in writing to the appointing officer and the Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

"**§ 120-302. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years. An appointee shall serve until the expiration of the appointee's then-current term as a member of the General Assembly.

(b) A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority that made the original appointment. The person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy.

(c) In the event a member of the Committee is unable to act on a specific matter before the Committee, and so indicates in writing to the appointing officer and the Committee, the appointing officer may appoint another member of the respective chamber from a list submitted by the Majority Leader or Minority Leader who nominated the member who is unable to act on the matter to serve as a member of the Committee for the specific matter only. If on any specific matter, the number of members of the Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Committee for that specific matter only.

"**§ 120-303. Quorum; expenses of members.**

(a) Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties.

"**§ 120-304. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee may:

(1) Prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.

(2) Receive and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) Organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed the actual cost.

(4) Preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.

(5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior and to suggest rules of conduct that shall be adhered to by legislators and legislative staff.

(6) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(7) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(8) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(9) Upon receipt of information that a legislator owes money to the State and is delinquent in repaying the obligation, to investigate and dispose of the matter according to the terms of this Article.

(10) Receive and review all statements of economic interest filed with the Committee by prospective and actual legislators and evaluate whether (i) the statements conform to the law and the rules of the Committee,

and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(11) Render advisory opinions in accordance with G.S. 120-307.

(12) Investigate alleged violations in accordance with G.S. 120-306 and to hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(13) Initiate and maintain oversight of ethics educational programs for legislators and legislative employees consistent with G.S. 120-308.

(14) Adopt rules to implement this Article, including those establishing ethical standards and guidelines governing legislators and legislative employees in attending to and performing their duties.

(15) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

"**§ 120-305. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as sections to cover the executive branch of government. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules that the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government.

"**§ 120-306. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Committee, or upon the written request of any legislator, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-304.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) A complaint filed under this Article shall state the name, address, and telephone number of the person filing the complaint, the name of the legislator against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a

violation of this Article has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) The Committee may decline to accept or investigate any attempted complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(3) In addition to subdivision (2) of this subsection, the Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(4) The Committee shall send a copy of the complaint to the legislator who is the subject of the complaint within 30 days of the filing.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. The Committee shall initiate an investigation of a complaint within 60 days of the filing of the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-307, or referral to appropriate law enforcement or other authorities pursuant to subsection (i)(2) of this section.

(e) Legislator Cooperation With Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to

cooperate fully with the Committee in any investigation shall be grounds for sanctions under G.S. 120-325.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a legislator or (ii) the complaint does not allege facts sufficient to constitute a violation of this Article, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed.

(g) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee. Upon the notice required under this subsection being sent, the complaint and any written response shall be public records, and all other documents offered at the hearing in conjunction with the complaint, shall be public records.

(h) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant, the legislator, and any other member of the public requesting notice. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be open to the public. The deliberations by the Committee on a complaint may be held in closed session, but the decision of the Committee shall be announced in open session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(i) Disposition of Investigations. – Except as permitted under subsection (f) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation of this Article is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.
b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.
c. Refer the matter to the appropriate house for appropriate action, which shall include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may upon written request to the Committee have the matter referred as provided under subdivision (2)c. of this subsection.

(j) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.

(k) Findings and Record. – The Committee shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Committee investigations. In all matters in which the complaint is a public record, the Committee shall ensure that a complete record is made and preserved as a public record.

(l) Confidentiality. – All motions, complaints, written requests, investigations and investigative materials shall be confidential and not a matter of public record, except as otherwise provided in this section.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

"**§ 120-307. Advisory opinions.**

(a) At the request of any legislator, the Committee may render advisory opinions on specific questions involving the meaning and application of this Article and the legislator's compliance with the requirements of this Article. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Committee shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from a finding by the Committee of a violation of this Article.

(b) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(c) The Committee shall interpret this Article by rules, and these interpretations are binding on all legislators upon publication.

(d) The Committee shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions and advisory opinions issued under this section are confidential and not matters of public record.

"**§ 120-308. Ethics education program.**

The Committee shall develop and implement an ethics education and awareness program designed to instill in all legislators and legislative employees a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest. The Committee shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election or employment and shall offer periodic refresher presentations as the Committee deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Committee within three months of the person's election, appointment or employment in a manner as the Committee deems appropriate.

"**§ 120-309 through 314. [Reserved]**

"Part 4. Public Disclosure of Economic Interests.

"**§ 120-315. Purpose.**

The purpose of disclosure of the financial and personal interests by legislators is to assist legislators and those persons who elect them to identify and avoid conflicts of interest and potential conflicts of interest between the individual legislator's private interests and the legislator's public duties. It is critical to this process that current and prospective legislators examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the legislator's private interests and the legislator's public duties. Legislators must take an active, thorough and conscientious role in the disclosure and review process, including having a complete knowledge of how the legislator's public position or duties might impact the legislator's private interests. Legislators have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Article and to fully disclose any conflict of interest or potential conflict of interest between the legislator's public and private interests but the disclosure, review and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 120-316. Statement of economic interest; filing required.**

(a) Every legislator who is elected or appointed shall file a statement of economic interest with the Committee before the legislator's initial election or appointment and, except as otherwise filed under subsection (b) of this section, no later than March 15 every year thereafter. A prospective legislator required to file a statement under this Article shall not be appointed or receive a certificate of election, prior to submission by the Committee of the Committee's evaluation of the statement in accordance with this Article.

(b) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(c) The boards of elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(d) If a candidate for an office subject to this Article does not file the statement of economic interest within the time required by this Article, the county board of elections immediately shall notify the candidate by certified mail, restricted delivery to addressee only, that, if the statement is not received within 15 days, the candidate shall not be certified as the party nominee, or in the case of a candidate nominated by a new party under G.S. 163-98 that the candidate shall be decertified by the State Board of Elections. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. If the delinquent candidate was nominated by a new party under G.S. 163-98, the State Board of Elections shall decertify the candidate, and no county board of elections shall place the candidate's name on the general election ballot as nominee of the party. A vacancy thus created on a party's ticket shall be considered a vacancy for the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114.

(e) Every person appointed to fill a vacant seat in the General Assembly under G.S. 163-11 shall file with the Legislative Services Office and the county board of elections of each county in the senatorial or representative district a statement of economic interest as specified in this Article no later than 10 days after taking the oath of office. If a person required to file a statement of economic interest as required under this section fails to file the statement within the time required by this section, the Legislative Services Officer shall notify the person that the statement must be received

within 15 days of notification. If the statement is not received within the time allowed in this subsection, then the Legislative Services Officer shall notify the Legislative Ethics Committee of the failure of the person to file the statement.

(f) The chair of the board of elections shall forward a certified copy of the statement of economic interest to the Committee for evaluation within 10 days of the date the statement of economic interest is filed with the board of elections.

(g) The Committee shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Article. Except as otherwise set forth in this section, the Committee shall furnish the appropriate forms needed to comply with this Article to legislators.

"**§ 120-317. Statements of economic interest as public records.**

The statements of economic interest filed under this Article, and all other written evaluations by the Committee of those statements, shall be filed with the Legislative Services Office, made available in the Legislative Library, and be public records.

"**§ 120-318. Contents of statement.**

(a) Any statement of economic interest required to be filed under this Article shall be on a form prescribed by the Committee and sworn to by the person required to file. Answers must be provided to all questions. The form shall include the following information about the person and the person's immediate family:

(1) The name, home address, occupation, employer, and business of the person filing.

(2) A list of each asset and liability of whatever nature, including legal, equitable, or beneficial interest, with a value of at least ten thousand dollars ($10,000) of the person, and that person's spouse. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the person or the person's spouse, including specific descriptions adequate to determine the location of each parcel and the specific interest held by the person and the person's spouse in each identified parcel.

b. Real estate that is currently leased or rented to the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to the State.

e. The name of each publicly owned company in which the value of securities held exceeds ten thousand dollars ($10,000).

f. The name of each nonpublicly owned company or business entity in which the value of securities or other equity interests held exceeds ten thousand dollars ($10,000), including interests in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. For each company or business entity listed under this sub-subdivision, the person shall indicate whether the listed company or entity owns securities or equity interests exceeding

a value of ten thousand dollars ($10,000) in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

g. If the person or a member of the person's immediate family is the beneficiary of a vested trust created, established, or controlled by the person, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the person, the statement also shall include a list of businesses in which the trust has an ownership interest exceeding ten thousand dollars ($10,000).

h. The person shall make a good faith effort to list any individual or business entity with which the person, the person's extended family, or any business with which the person or a member of the person's extended family is associated, has a financial or professional relationship provided (i) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the person; or (ii) a reasonable person would conclude that any other financial or professional interest of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the person. For each individual or business entity listed under this subsection, the person shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

i. A list of all other assets and liabilities with a valuation of at least ten thousand dollars ($10,000), including bank accounts and debts.

j. A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and State income tax returns of the person filing where ten thousand dollars ($10,000) or more was received from that source.

k. If the person is a practicing attorney, an indication of whether the person, or the law firm with which the person is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

1. Administrative law.
2. Admiralty.
3. Corporation law.
4. Criminal law.
5. Decedents' estates.
6. Insurance law.

7. Labor law.
8. Local government.
9. Negligence – defendant.
10. Negligence – plaintiff.
11. Real property.
12. Taxation.
13. Utilities regulation.

l. A list of all nonpublicly owned businesses with which, during the past five years, the person or the person's immediate family has been associated or has an economic interest, indicating the time period of that association and the relationship with each business as an officer, employee, director, partner, or owner. The list also shall indicate whether each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

m. A list of all gifts, and the sources of the gifts, of a value of more than one thousand dollars ($1,000) received during the 12 months preceding the reporting period under subsection (b) of this section from sources other than the person's extended family, and a list of all gifts, and the sources of the gifts, valued in excess of five hundred dollars ($500.00) received from any source having business with, or regulated by, the State.

n. A list of all bankruptcies filed during the preceding five years by the person, the person's spouse, or any entity in which the person, or the person's spouse, has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

o. A list of all directorships on all business boards of which the person or the person's immediate family is a member.

(3) Each statement of economic interest shall contain the person's sworn certification that the person has read the statement and that, to the best of the person's knowledge and belief, the statement is true, correct, and complete. The person's sworn certification also shall provide that the person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(4) If the person believes a potential for conflict exists, the person has a duty to inquire of the Committee as to that potential conflict.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was signed.

(c) The Committee shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Committee shall submit the evaluation to all of the following:

(1) The person who submitted the statement.
(2) The Legislative Services Office.

"**§ 120-319. Failure to file.**

(a) In addition to the provision of G.S. 120-316, within 30 days after the date due in accordance with G.S. 120-316, for every person from whom a statement of economic interest has not been received by the Committee, or whose statement of economic interest has been received by the Committee but deemed by the Committee to be incomplete, the Committee shall notify the person of the failure to file or complete and shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the person shall be subject to a fine under this section.

(b) Any person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Committee. The Office of the Attorney General shall enforce the collection of fines imposed under this subsection.

(c) Failure by any person to file or complete a statement of economic interest within 60 days of the receipt of the notice required under subsection (a) of this section shall be deemed to be a violation of this Article and shall be grounds for disciplinary action under G.S. 120-325.

"**§ 120-320. Concealing or failing to disclose material information.**

A person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be punished as a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-321. Penalty for false or misleading information.**

A person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading shall be punished as a Class H felon and shall be subject to disciplinary action under G.S. 120-325.

"**§ 120-322 through 324. [Reserved]**

"Part 5. Violation Consequences.

"**§ 120-325. Violation consequences.**

(a) Violation of this Article by any legislator or legislative employee is grounds for disciplinary action. Except as specifically provided in this Article or for perjury under G.S. 120-306 and G.S. 120-318, no criminal penalty shall attach for any violation of this Article.

(b) The willful failure of any legislator to comply with this Article shall be deemed a violation of this Article for purposes of G.S. 120-306.

(c) Nothing in this Article affects the power of the State to prosecute any person for any violation of the criminal law.

(d) The Legislative Ethics Committee may request the Office of the Attorney General to seek to enjoin violations of G.S. 120-288."

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. Section 1 of this act becomes effective January 1, 2007. The remainder of this act becomes effective October 1, 2006, applies to persons holding office and employed on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to those prosecutions.

VISITOR REGISTRATION SHEET

JUDICIARY 1 — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elaine F. Marshall	SOS
ANDY VANORE	OFFICE OF GOV
Jim Ahler	NC ASSN. of CPAs
John McKee	Gov Office
Caroline Howe	Lt. Gov's Office
Bob Gillam	Public Staff - NCUC
Leigh Hayden	Bd of Ethics
Kathleen Edwards	UNC-CH Daily Bulletin
John Bowdish	Wake Seneca
Henry Hinton	N.C.B.A.
Paul Stock	NCBA

VISITOR REGISTRATION SHEET

JUDICIARY 1 — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Moore	NC DOC - DCC
Greg Mitchell	NCACDL
BILL WEIS	SBI
Robin Pendergraft	SBI
Lu Hodges	NCCLH
Daniel Baum	
Rodney Maddox	SOSNC
Robert Wilson	SOSNC
Sam Hyde	SOSNC
Ashley Montgomery	SOSNC
Grace Jeter	SOSNC

VISITOR REGISTRATION SHEET

JUDICIARY 1 — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANTHONY ALLEN	NCAOC
Eric Sauls	Edmisten & Webb
Gardner Payne	" "
Michael Houser	NCAE
Andy Romanet	NCLM
Steve Woodall	NC Farm Bureau
Anita Watkins	NCLM
Katherine Joyce	NCASA
[illegible]	WCPSS
Kathryn Pomeroy	Governor's Office
T.J. Wasilosky	N.C. Concerned Bikers Assoc/ABATE

From: Joyce Hodge (Senate LA Director)
Sent: Tuesday, July 18, 2006 3:46 PM
Subject: J-1 Amended Notice, HB 966 Added

Principal Clerk ____
Reading Clerk ____

Corrected: HOUSE BILL 966 ADDED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	July 19, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 88	Electoral Fairness Act.	Representative Miller
HB 1871	Sex Offender/Out of State Registry/DMV Check.	Representative Goforth Representative Ray Representative Glazier
HB 1896	Sex Offender Registration Changes.	Representative Goforth Representative Farmer-Butterfield Representative Ray Representative Glazier
HB 1965	Eminent Domain Restrictions.	Representative Goforth Representative Sherrill
HB 966	Durham Precincts.	Representative Luebke Representative Miller

POTENTIALLY ANY OTHER BILL STILL PENDING IN COMMITTEE

Senator Daniel G. Clodfelter, Chair

J-1 Committee

July 19, 2006

Minutes

Senator Dan Clodfelter, Chair called the meeting to order at 10:13 a.m. with eighteen members present. He introduced Pages, Tiffany Ezuma, Amanda Long, Michael Mazzoleni and Grant Gross, from Raleigh, NC, Natalie Moss, from Gastonia, NC and Brianna Oliver, from Drexel, NC.

HB-1896 (Sex Offender Registration Changes) Committee Substitute was introduced by Senator Clodfelter. Senator Charlie Albertson moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney, Hal Pell explained that the bill amends the sex offender registration statutes, amends criminal laws, and imposes electronic monitoring requirements. (See Bill Summary for further information. Senator's Vernon Malone, RC Soles, Tony Rand and Richard Stevens had questions. The questions were answered by Senator Clodfelter and Mr. Pell. Bill sponsor, Representative Bruce Goforth asked for support on the bill. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

HB-1965 (Eminent Domain Restrictions) was introduced by Senator Clodfelter. He stated that the bill had been heard at a previous meeting and Senator Phillip Berger had offered an Amendment to the bill at that time. Bill sponsor, Senator John Snow, spoke briefly on the bill. Senator Berger explained his Amendment, and asked for adoption of the Amendment. (See attached Amendment) All members voted yes. Motion carried. Senator Jeanne Lucas moved for a Favorable Report. All members voted yes. Motion carried.

HB-88 (Electoral Fairness Act) Committee Substitute was introduced by Senator Clodfelter. The Committee Substitute was adopted at the July 12th J-1 Committee meeting. Staff attorney, Bill Gilkeson explained that the bill would equalize the number of signatures required of a new political party and of a statewide unaffiliated candidate to achieve ballot access. It would reduce the number of votes a new party must generate for its nominee for President or Governor for the party

to maintain ballot eligibility. It would apply the filing fee provisions to new party and unaffiliated candidates and prohibit a party from filing a vacancy on its ticket with a person who ran for the same office in the primary of another party. (See Bill Summary for further information). Senator Berger offered an Amendment on page 1, line 2, page 1, line 22 and page 2, line 42. (See attached Amendment). He then explained the Amendment. Senator's Charlie Albertson, David Hoyle, Tony Rand and Janet Cowell had questions. The questions were answered by Senator Clodfelter and Senator Berger. Senator Clodfelter called for a vote on the Amendment. There were yeas and nays. Senator Clodfelter then called for a vote by show of hands. Majority voted against. Amendment failed. Senator Rand moved for a Favorable Report. All members voted yes. Motion carried.

HB-966 (Durham Precincts) Committee Substitute was introduced by Senator Clodfelter. Senator Tony Rand moved for adoption of the Committee Substitute. All members voted yes. Motion carried. Staff attorney Bill Gilkeson explained the bill would provide for disclosure of "Candidate-specific communications." The disclosure would be similar to what current law provides, and what recently ratified H-1847 would provide, for "electioneering communications."(See Bill Summary for further information. Senator Rand offered a Technical Amendment to the bill, and stated that Mr. Gilkeson would draw up a Clarifying Amendment #1 to the bill. All members voted for adoption of the Technical Amendment. Senator Phillip Berger offered an Amendment #2 to the bill. Senator Clodfelter called for a vote. All members voted yes. Motion carried. Senator Rand stated that it would be rolled into a new Committee Substitute. Senator's Phillip Berger, RC Soles, Tony Rand and Richard Stevens had questions. The questions were answered by Senator Rand. Senator Jerry Tillman moved for a Favorable Report. All members voted yes. Motion carried.

Being no further business the meeting was adjourned at 10:58 a.m.

Senator Dan Clodfelter, Chair

Wanda Joyner, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

CORRECTED REPORT

Wednesday, July 19, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 3

H.B.(SCS #2) **1896** Sex Offender Registration Changes.

Draft Number:	PCS10648
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1965** Eminent Domain Restrictions.

Draft Number:	PCS10651
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Daniel G. Clodfelter, Chair

Wednesday, July 19, 2006

Senator CLODFELTER,
submits the following with recommendations as to passage:

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

H.B. **966** Durham Precincts.

Draft Number:	PCS 50778
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **88** Electoral Fairness Act.

Draft Number:	PCS 60875
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Finals

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1896

Corrected Copy 5/17/06
Committee Substitute Favorable 6/12/06
Senate Judiciary I Committee Substitute Adopted 7/6/06
Senate Judiciary I Committee Substitute #2 Adopted 7/12/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1896-PCS10648-RK-71

Short Title: Sex Offender Registration Changes. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO (1) AMEND THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS; (2) IMPLEMENT A SATELLITE-BASED MONITORING SYSTEM TO ASSIST WITH THE SUPERVISION OF CERTAIN SEX OFFENDERS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE; (3) EXPAND THE DEFINITION OF 'SEXUAL CONTACT' AS IT RELATES TO THE OFFENSE OF SEXUAL BATTERY; (4) CRIMINALIZE FALSE STATEMENTS TO THE STATE BUREAU OF INVESTIGATION; (5) AUTHORIZE THE DEPARTMENT OF CORRECTION TO STUDY THE MENTAL HEALTH TREATMENT PRACTICES OF SEX OFFENDERS; (6) CREATE THE CRIMINAL OFFENSES OF HUMAN TRAFFICKING AND SEXUAL SERVITUDE; (7) AMEND THE OFFENSE OF INVOLUNTARY SERVITUDE; (8) ADD THE OFFENSE OF SEXUAL SERVITUDE TO THE LIST OF OFFENSES THAT REQUIRE REGISTRATION UNDER SEX OFFENDER REGISTRATION LAWS; AND (9) AMEND LAWS APPLICABLE TO NOTIFICATION OF SEX OFFENDER REGISTRATION REQUIREMENTS BY THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain

victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), 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), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6

shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) Part 2 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.8A. Notification requirement for out-of-county employment if temporary residence established.**

(a) Notice Required. – A person required to register under G.S. 14-208.7 shall notify the sheriff of the county with whom the person is registered of the person's place of employment and temporary residence, which includes a hotel, motel, or other transient lodging place, if the person meets both of the following conditions:

(1) Is employed or carries on a vocation in a county in the State other than the county in which the person is registered for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, on a part-time or full-time basis, with or without compensation or government or educational benefit.

(2) Maintains a temporary residence, including in that county for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year.

(b) Time Period. – The notice required by subsection (a) of this section shall be provided within 72 hours after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for more than 10 business days within a 30-day period, or within 10 days after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for an aggregate period exceeding 30 days in a calendar year.

(c) Notice to Division. – Upon receiving the notice required under subsection (a) of this section, the sheriff shall immediately forward the information to the Division. The Division shall notify the sheriff of the county where the person is working and maintaining a temporary residence of the person's place of employment and temporary address in that county."

SECTION 4.(b) This section becomes effective June 1, 2007.

SECTION 5.(a) G.S. 14-208.7 reads as rewritten:

"**§ 14-208.7. Registration.**

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of at least 10 years following the date of initial county registration.~~release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.~~

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph;

(4) The person's fingerprints;

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student; and

(6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry.

(d) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this

section. The sheriff shall provide the registrant with written proof of registration at the time of registration."

SECTION 5.(b) This section becomes effective December 1, 2006.

SECTION 6.(a) G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register ~~moves~~ intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least 10 days before the date the person intends to leave this State to establish residence in another state or jurisdiction. ~~provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the~~ The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

(1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.

(2) The sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the ~~change of address~~ information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within 10 days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person ~~shall~~ shall, within 10 days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new ~~status not later than the tenth day after the change to the sheriff of the county with whom the person registered.~~ status. The written notice shall include the name and address of the institution of higher

education at which the student is or was enrolled. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person ~~shall~~ shall, within 10 days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. ~~Upon receipt of the notice, the~~The sheriff shall immediately forward this information to the Division."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

(a) The information in the county registry shall be verified ~~annually~~ semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) Additional Verification May Be Required. – During the period that an offender is required to be registered under this Article, the sheriff is authorized to

attempt to verify that the offender continues to reside at the address last registered by the offender.

(c) Additional Photograph May Be Required. – If it appears to the sheriff that the current photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, upon in-person notice from the sheriff, the sex offender shall allow the sheriff to take another photograph of the sex offender at the time of the sheriff's request. If requested by the sheriff, the sex offender shall appear in person at the sheriff's office during normal business hours within 72 hours of being requested to do so and shall allow the sheriff to take another photograph of the sex offender. A person who willfully fails to comply with this subsection is guilty of a Class 1 misdemeanor."

SECTION 7.(b) This section becomes effective December 1, 2006, and applies to offenses on or after that date.

SECTION 8.(a) G.S. 14-208.11 reads as rewritten:

"**§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.**

"(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

(1) Fails to ~~register.~~register as required by this Article.

(2) Fails to notify the last registering sheriff of a change of ~~address.~~address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(7) Fails to report in person to the sheriff's office as required by G.S. 14-208.7, 14-208.9, and 14-208.9A.

(8) Reports his or her intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff in the manner required by G.S. 14-208.9.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement officer who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3).

(c) A person who is unable to meet the registration or verification requirements of this Article shall be deemed to have complied with its requirements if:

(1) The person is incarcerated in, or is in the custody of, a local, State, private, or federal correctional facility,

(2) The person notifies the official in charge of the facility of their status as a person with a legal obligation or requirement under this Article and

(3) The person meets the registration or verification requirements of this Article no later than 10 days after release from confinement or custody."

SECTION 8.(b) G.S. 14-208.11(a), as amended by Section 8(a) of this section, reads as rewritten:

"(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

...

(9) Fails to notify the registering sheriff of out-of-county employment if temporary residence is established as required under G.S. 14-208.8A."

SECTION 8.(c) Section 8(b) of this section becomes effective June 1, 2007, and applies to offenses committed on or after that date. The remainder of this section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 9.1.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.**

(a) It shall be unlawful and a Class H felony for any person who has reason to believe that an offender is in violation of the requirements of this Article, and who has the intent to assist the offender in eluding arrest, to do any of the following:

(1) Withhold information from, or fail to notify, a law enforcement agency about the offender's noncompliance with the requirements of this Article, and, if known, the whereabouts of the offender.

(2) Harbor, attempt to harbor, or assist another person in harboring or attempting to harbor, the offender.

(3) Conceal or attempt to conceal, or assist another person in concealing or attempting to conceal, the offender.

(4) Provide information to a law enforcement agency regarding the offender that the person knows to be false information.

(b) This section does not apply if the offender is incarcerated in or is in the custody of a local, State, private, or federal correctional facility."

SECTION 9.1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. ~~Termination~~ Request for termination of registration requirement.**

(a) A person required to register under this Part who has served his or her sentence may petition the superior court in the district where the person resides to terminate the registration requirement~~The requirement that a person register under this Part automatically terminates~~ 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article.

(a1) The court may grant the relief if:

(1) The petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence,

(2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and

(3) The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

(a2) The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The petitioner may present evidence in support of the petition and the district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied.

(a3) If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the clerk of court shall forward a certified copy of the order to the Division to have the person's name removed from the registry.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is ~~terminated.~~terminated by the court under subsection (a) of this section."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Part 3 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.24A. Sexual predator prohibited from working or volunteering for child-involved activities; limitation on residential use.**

(a) It shall be unlawful for any person required to register under this Article to work for any person or as a sole proprietor, with or without compensation, at any place where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors.

(b) It shall be unlawful for any person to conduct any activity at his or her residence where the person:

(1) accepts a minor or minors into his or her care or custody from another, and

(2) knows that a person who resides at that same location is required to register under this Article.

(c) A violation of this section is a Class F felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to offenses on or after that date.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(5) 'Sexual contact' means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, ~~or~~ (ii) a person touching another person with their own sexual organ, anus, breast, groin, or ~~buttocks.~~buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. G.S. 14-208.28 reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

The information provided to the sheriff shall be verified ~~annually~~ semiannually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration ~~date,~~date and six months after that date, the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form."

SECTION 14. G.S. 15A-1341 is amended by adding a new subsection to read:

"(d) Search of Sex Offender Registration Information Required When Placing a Defendant on Probation. – When the court places a defendant on probation, the probation officer assigned to the defendant shall conduct a search of the defendant's name or other identifying information against the registration information regarding sex offenders compiled by the Division of Criminal Statistics of the Department of Justice in accordance with Article 27A of Chapter 14 of the General Statutes. The probation officer may conduct the search using the Internet site maintained by the Division of Criminal Statistics."

SECTION 15.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 5. Sex Offender Monitoring.

"**§ 14-208.33. Establishment of program; creation of guidelines; duties.**

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor two categories of offenders as follows:

(1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.

(2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(b) In developing the guidelines for the program, the Department shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Department determines that an active program will not work as provided by this section, then the Department shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

(1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Department may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part.

"§ 14-208.34. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.

(a) Any person described by G.S. 14-208.33(a)(1) shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the registration period imposed under G.S. 14-208.23 which is the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.35.

(b) Any person described by G.S. 14-208.33(a)(2) who is ordered by the court to enroll in a satellite-based monitoring program shall do so with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the period of time ordered by the court.

"§ 14-208.35. Lifetime registration offenders required to submit to satellite-based monitoring for life and to continue on unsupervised probation upon completion of sentence.

Notwithstanding any other provision of law, when the court sentences an offender who is in the category described by G.S. 14-208.33(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender, upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, continue to be enrolled in the satellite-based monitoring program for the offender's life and be placed on unsupervised probation unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.36.

"§ 14-208.36. Request for termination of satellite-based monitoring requirement.

(a) An offender described by G.S. 14-308.33(a)(1) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence.

(b) Upon receipt of the request for termination, the Commission shall review documentation contained in the offender's file and the statewide registry to determine whether the person has complied with the provisions of this Article. In addition, the Commission shall conduct fingerprint-based state and federal criminal history record checks to determine whether the person has been convicted of any additional reportable convictions.

(c) If it is determined that the person has not received any additional reportable convictions during the period of satellite-based monitoring and the person has substantially complied with the provisions of this Article, the Commission may

terminate the monitoring requirement if the Commission finds that the person is not likely to pose a threat to the safety of others.

(d) If it is determined that the person has received any additional reportable convictions during the period of satellite-based monitoring or has not substantially complied with the provisions of this Article, the Commission shall not order the termination of the monitoring requirement.

(e) The Commission shall not consider any request to terminate a monitoring requirement except as provided by this section. The Commission has no authority to consider or terminate a monitoring requirement for an offender described in G.S. 14-208.33(a)(2).

"**§ 14-208.37. Failure to enroll; tampering with device.**

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class F felony.

(b) Any person who intentionally tampers with, removes, or vandalizes a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class E felony.

"**§ 14-208.38. Fees.**

(a) There shall be a one-time fee of ninety dollars ($90.00) assessed to each person required to enroll pursuant to this Part. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on satellite-based monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (c) of this section to determine the payment schedule. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system.

(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction.

(c) If a person placed on supervised probation, parole, or post-release supervision is required as a condition of that probation, parole, or post-release supervision to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule."

SECTION 15.(b) G.S. 15A-1343(b2) reads as rewritten:

"(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.
(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.
(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.
(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(1).
(8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.33(a)(2), and the Department of Correction, based on the Department's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised ~~probation.~~probation, except as provided in G.S. 14-208.35."

SECTION 15.(c) G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.33(a)(1)."

SECTION 15.(d) G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

"(5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(2)."

SECTION 15.(e) G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is in the category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2) violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation."

SECTION 15.(f) G.S. 15A-1368.2 is amended by adding a new subsection to read:

"(c1) Notwithstanding subsection (c) of this section, a person required to submit to satellite-based monitoring pursuant to G.S. 15A-1368.4(b1)(6) shall continue to participate in satellite-based monitoring beyond the period of post-release supervision until the Commission releases the person from that requirement pursuant to G.S. 14-208.36."

SECTION 15.(g) G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(1).

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(2)."

SECTION 15.(h) G.S. 15A-1374 is amended by adding a new subsection to read:

"(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is in a category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2), the Commission must require as a condition of parole that the

parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 15.(i) G.S. 143B-266 is amended by adding a new subsection to read:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by G.S. 14-208.35. The Commission may grant or deny those requests in compliance with G.S.14-208.35."

SECTION 15.(j) The Department of Correction shall have the program enacted by subsection (a) of this section established by January 1, 2007.

SECTION 15.(k) This subsection is effective on July 1, 2006. Of the funds appropriated by Senate Bill 1741 as enacted by the 2005 General Assembly, Regular Session 2006, to the Department of Correction for the 2006-2007 fiscal year the sum of one million three hundred seven thousand two hundred eighteen dollars ($1,307,218) shall be used to implement the sex offender monitoring program established pursuant to this section. Notwithstanding G.S. 143-23(a2), the Department of Correction may use available funds to implement this program during the 2006-2007 fiscal year if expenditures are anticipated to exceed the amount appropriated by this act. Prior to exceeding the amount appropriated for this program by this act, the Department of Correction shall report to the Joint Legislative Commission on Governmental Operations.

SECTION 15.(l) Unless otherwise provided in the section, this section is effective when it becomes law and applies to offenses committed on or after that date. This section also applies to any person sentenced to intermediate punishment on or after that date and to any person released from prison by parole or post-release supervision on or after that date. This section also applies to any person who completes his or her sentence on or after the effective date of this section who is not on post-release supervision or parole. However, the requirement to enroll in a satellite-based program is not mandatory until January 1, 2007, when the program is established.

SECTION 16. The Department of Correction shall either issue an RFP prior to signing a contract, or with prior approval by the State Chief Information Officer or his designee, enter into a contract through an approved contracting alliance or consortium for a passive and active Global Positioning System. The system shall be for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision. If an RFP is issued, the contract shall be awarded by October 1, 2006 for contract terms to begin January 1, 2007. The Department of Correction shall report by November 1, 2006 to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the details of the awarded contract.

SECTION 17. No later than January 1, 2007, the Department of Correction shall develop a graduated risk assessment program that identifies, assesses, and closely monitors a high-risk sex offender who, while not classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense as those terms are defined

in G.S. 14-208.6, may still require extraordinary supervision and may be placed on probation, parole, or post-release supervision only on the conditions provided in G.S. 15A-1343(b2) or G.S. 15A-1368.4(b1).

SECTION 18. The Department of Correction shall study and develop a plan for offering mental health treatment for incarcerated sex offenders designed to reduce the likelihood of recidivism. The Department shall study appropriate and effective mental health treatment techniques and alternatives. Services must be best practices, as determined by the Department. The Department will consult various stakeholders from organizations dedicated to the prevention of sexual assault, victims' advocacy organizations, and experts in the field of treatment of sexual offenders. The Department shall consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than January 15, 2007, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and the General Assembly on or before October 1, 2007.

SECTION 19.(a) G.S. 14-208.6(4)(b) reads as rewritten:

"b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this ~~section.~~section, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state."

SECTION 19.(b) Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-9.3. Notification of requirements for sex offender registration.**

The Division shall provide notice to each person who applies for the issuance of a drivers license, learner's permit, or instruction permit to operate a motor vehicle, and to each person who applies for an identification card, that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes."

SECTION 19.(c) G.S. 20-9 is amended by adding a new subsection to read:

"(i) The Division shall not issue a drivers license to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a drivers license to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a drivers license but shall require the person to sign an affidavit acknowledging that the person has been

notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a drivers license, then the Division shall issue the drivers license but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-30, and the Division shall immediately revoke the drivers license and shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a license or whose license has been revoked by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction, and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-30."

SECTION 19.(d) G.S. 20-37.7 is amended by adding a new subsection to read:

"(b1) Search National Sex Offender Public Registry. -- The Division shall not issue a special identification card to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a special identification card to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a special identification card but shall require the person to sign an affidavit acknowledging that the person

has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a special identification card, then the Division shall issue the card but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-37.8, and the Division shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a special identification card by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction, and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a special identification card under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-37.8."

SECTION 19.(e) This section becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date.

SECTION 20.(a) G.S. 14-43.2 is repealed.

SECTION 20.(b) Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 10A.

"Human Trafficking.

"**§ 14-43.4. Definitions.**

(a) Definitions. – The following definitions apply in this Article:

(1) Coercion. – The term includes all of the following:

a. Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person.

b. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule.

c. Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person.

d. Providing a controlled substance, as defined by G.S. 90-87, to a person.

(2) Deception. – The term includes all of the following:

a. Creating or confirming another's impression of an existing fact or past event that is false and which the accused knows or believes to be false.

b. Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt.

c. Promising benefits or the performance of services that the accused does not intend to deliver or perform or knows will not be delivered or performed.

(3) Involuntary servitude. – The term includes the following:

a. The performance of labor, whether or not for compensation, or whether or not for the satisfaction of a debt; and

b. By deception, coercion, or intimidation using violence or the threat of violence or by any other means of coercion or intimidation.

(4) Minor. – A person who is less than 18 years of age.

(5) Sexual servitude. – The term includes the following:

a. Any sexual activity as defined in G.S. 14-190.13 for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or

b. Any sexual activity as defined in G.S. 14-190.13 that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

"**§ 14-43.5. Human trafficking.**

(a) A person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means

another person with the intent that the other person be held in involuntary servitude or sexual servitude.

(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

"**§ 14-43.6. Involuntary servitude.**

(a) A person commits the offense of involuntary servitude when that person knowingly and willfully holds another in involuntary servitude.

(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(d) Nothing in this section shall be construed to affect the laws governing the relationship between an unemancipated minor and his or her parents or legal guardian.

(e) If any person reports a violation of this section, which violation arises out of any contract for labor, to any party to the contract, the party shall immediately report the violation to the sheriff of the county in which the violation is alleged to have occurred for appropriate action. A person violating this subsection shall be guilty of a Class 1 misdemeanor.

"**§ 14-43.7. Sexual servitude.**

(a) A person commits the offense of sexual servitude when that person knowingly subjects or maintains another in sexual servitude.

(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section."

SECTION 20.(c) G.S. 14-39(a) reads as rewritten:

"(a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

(1) Holding such other person for a ransom or as a hostage or using such other person as a shield; or

(2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or

(3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person; or

(4) Holding such other person in involuntary servitude in violation of G.S. ~~14-43.2.~~ 14-43.6.

(5) Trafficking another person with the intent that the other person be held in involuntary servitude or sexual servitude in violation of G.S. 14-43.5.

(6) Subjecting or maintaining such other person for sexual servitude in violation of G.S. 14-43.7."

SECTION 20.(d) G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-43.7 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), 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), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 20.(e) G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) Any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a Class 2 misdemeanor.

(b) In response to an official inquiry by a Sworn Agent of the State Bureau of Investigation, any person who shall willfully:

(1) Falsify, conceal, or cover up by any trick, scheme, or device a material fact; or

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

shall be guilty of a Class H felony."

SECTION 20(f). G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; ~~14-43.2;~~ 14-43.6; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-277.3; 14-288.9; or 20-138.5.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); 14-33.2, or 14-277.3.

e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; or 14-277.3."

SECTION 21. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 22. Section 15 of this act is effective as provided herein. Sections 14, 16, 17, 18, 21, and 22 are effective when this act becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. Except as otherwise provided in this act, the remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

HOUSE BILL 1896:
Sex Offender Registration Changes

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 18, 2006
Introduced by:		**Summary by:**	Hal Pell
Version:	PCS H1896-CSRK-77		Committee Co-Counsel

SUMMARY: ***This act amends the sex offender registration statutes, amends criminal laws, and imposes electronic monitoring requirements.***

CURRENT LAW: There are two established sex offender registration programs: the Sex Offender and Public Protection Registration Program, with a registration period of 10 years, and the Sexually Violent Predator Registration Program, with a lifetime registration requirement. [See definition of terms following the summary]

BILL ANALYSIS:

Section 1 -- Adds statutory rape of a person who is 13, 14, or 15 years old by a person who is at least six years older to the list of offenses that require sex offender registration.

Section 2 -- Amends explanatory statute to conform to reflect new requirement for in-person registration. (See Section 5, below)

Section 3 -- Requires juveniles subject to registration to also register in person.

Section 4 -- Requires notice to the sheriff in the offender's county of registration when the offender will be working for a specified periods of time in another county.

Section 5 -- Requires in-person registration. Requires the Sheriff to provide the registrant with written proof of registration at the time of registration. **(From H1871)**

Section 6 -- Current law provides that a person moving out of state must notify the Sheriff no later than 10 days after moving to the new state. The act amends the law to require that the person notify the Sheriff in person of the intent to move at least 10 days before the departure date. The person is required to provide, in writing, the following: address, municipality, county and state of intended reference.

If the person does not leave the State as provided in the notification, then the person must so notify the Sheriff within 10 days after the previously indicated move date. The section also provides similar amendments to the notification procedures for change of academic and employment status.

If the Sheriff determines that the file photograph is not an accurate depiction of the registrant, then a new photograph must be taken.

Section 7 -- Adds additional requirements to the registration provisions:

- Verification biannually instead of annually
- Verification in person within 10 days of receipt of the form.
- If the Sheriff determines that the file photograph is not an accurate depiction of the registrant, then a new photograph must be taken.

[Technical Change: Gives registrant 72 hours (instead of 48 hours) to appear for photograph.].

Section 8 – Adds the following to offenses designated as Class F felonies:

- Fails to report in person as required by the act
- Reports intent to reside in another State but remains in the State without notification to the Sheriff.
- Fails to notify the Sheriff of out-of-county employment.
- Provides exception and procedure for incarcerated registrant with registration or verification requirement.

[Technical Change: Moves penalty for failure to notify registering sheriff of out-of-county employment to new bill section; allows for separate effective date for the provision].

Section 9 -- Creates a new Class H felony offense for persons who have reason to believe that a person is in noncompliance with the sex offender registration statutes, and with the intent to assist the offender in eluding law enforcement agencies, does any of the following:

- Withholds information about the noncompliance, or the whereabouts of the offender
- Harbors, attempts to harbor, or assists another in these actions
- Conceals, attempts to conceal, or assists another in these actions
- Provides false information to a law enforcement agency, knowing it to be false

Section 10 – Under current law, a 10-year registration terminates automatically if the registrant has not committed any offense subject to registration. The section amends current law to require the registrant to file a petition in the superior court to terminate the registration period. The amendments provide guidelines for the judge in determining whether to grant the petition. The District Attorney is notified at least three weeks prior to a hearing, and may present evidence in opposition. An unsuccessful petitioner must wait one year following a denial to re-petition the court. If the relief is granted, then the person's name is removed from the registry.

Section 11 – Prohibits persons required to register from working (paid or volunteer) for an employer, or for themselves, **at any place** where the person would instruct, supervise, or care for minors. (Includes all registrants and the specific listing of locations are eliminated from previous version).

Prohibits any person from conducting an activity where minors are left in their care if any person residing there is required to register under the Article.

A violation of the provision is a Class F felony.

Section 12 -- Expands the definition of 'sexual contact,' which is the term defining the physical act in the statutory offense of sexual battery.

Section 13 -- Requires juvenile court counselors to report on behalf of juvenile registrants biannually (currently an annual requirement).

Section 14 -- Requires probation officers to conduct a search of the probationer's name against the registration information complied under the sex offender registration act.

Section 15 –

- Requires the Department of Correction (DOC) to use an electronic monitoring system for those lifetime registrants required to submit to such monitoring that does the following:

- Actively monitors the offender
- Identifies the offender's location
- Timely reports or records the offenders presence near of within a crime scene, prohibited area, or departure from specified geographical limitations.

If there is not a system available that complies with the section's requirements, then the Department is authorized to use a passive electronic system that works within the technological or geographical limitations.

- Creates two categories of individuals who are required to submit to electronic monitoring, and requires a court to impose registration as a condition of probation or parole.
  - Sexually violent predators, recidivists, or convicted of an aggravated offense. The term of electronic monitoring is life. The person may petition the Post-Release Supervision and Parole Commission to terminate the monitoring upon completion of the person's sentence, and any period of probation, parole, or post-release supervision. The person remains on unsupervised probation for the duration of the term.
  - Persons who committed an offense involving the physical, mental, or sexual abuse of a minor, and who require the highest level of supervision based on the DOC sex offender risk assessment program. The person is subject to monitoring for the time period ordered by the court.

A person required to enroll who doesn't do so is guilty of a Class F felony. Intentionally tampering with, removing, or vandalizing a device is a Class E felony.

There is a fee of $90 payable upon enrollment. Upon motion and good cause, the court may waive the fee. The fee is to offset the costs of the monitoring, and a payment schedule may be set by a probation officer.

Section 16 -- Requires the DOC to issue a Request for Proposal (RFP) for electronic monitoring and monitoring services. The RFP is for the most recent, and cost-effective technology available. The DOC is required to issue an RFP for passive and active Global Positioning Systems (GPS) for use as an intermediate sanction for sex offenders. The RFP must have separate bids: one for equipment, maintenance, and technical support; and one for the foregoing items plus monitoring services. The contract term would begin on January 1, 2007. The section contains report dates for the draft RFP (to Fiscal Research), and RFP responses (to Appropriation Committees and Subcommittee Chairs).

Section 17 -- Requires the DOC to develop, no later than January 1, 2007, a graduated risk assessment program that identifies persons that may not be lifetime registrants, but may need extraordinary supervision under similar conditions as a lifetime registrant.

Section 18 -- Requires the Department of Correction to study and develop a plan of mental health treatment programs for incarcerated sex offenders designed to reduce the likelihood of recidivism. The Department is required to report back to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services. A preliminary report is due no later than January 15, 2007, and a final report no later than October 1, 2007.

Section 19 (From H1871) -- Requires the Division of Motor Vehicles to:

- Provide notice to applicants for license or ID card that if the person is a sex offender, then they must register.
- Search the National Sex Offender Public Registry to determine if an out-of-State applicant is currently registered in another State. If the person is a registrant, then no license or ID card may be issued until the person is registered in the State. If the person does not appear on the registry, then an acknowledgment of the State's registration law must be signed.
- Provides procedure if the DMV is unable to search the Registry at the time of application.
- Provides a procedure for petition to the courts if the DMV refuses to issue a license or revokes a license that was improperly issued, i.e., a later search revealed the registrant's status. Gives jurisdiction to Superior, District, or Special courts to hear the petition.

Section 20 -- Creates Human Trafficking statute in criminal laws.

- Any person who recruits, entices, harbors, transports, proves, or obtains by any means another person with the intent that the person be held in involuntary servitude or sexual servitude is guilty of a Class F felony. If the victim is a minor, then it is a Class C felony. Involuntary servitude and sexual servitude are defined, and are separate offenses.
- Amends the kidnapping law to add human trafficking and sexual servitude as purposes for abducting that would support a kidnapping conviction.
- Amends the list of offenses that require registration under the Sex Offender Registry statutes to include sexual servitude.
- Creates a criminal offense if a person willfully responds to an official inquiry by an SBI agent by making a false statement, using false documents, concealing facts, or other misrepresentations. The offense is a Class H felony.

Section 21 -- Severability clause.

Section 22 – Section 15 is effective as provided. Sections 14, 16, 17, 18, and 19 are effective when the act becomes law. Section 20 is effective July 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

Summary contribution by Susan Sitze, Staff Attorney

H1896e3-SMRK-CSRK-71

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1896

Short Title:	Sex Offender Registration Changes.	(Public)
Sponsors:	Representatives Goforth, Ray, Glazier, Farmer-Butterfield (Primary Sponsors); B. Allen, L. Allen, Brown, Clary, Coates, England, Faison, Fisher, Frye, Grady, Harrison, Hilton, Holliman, Hollo, Ed Jones, Luebke, McGee, Moore, Pate, Preston, Rapp, Setzer, Sherrill, Starnes, Steen, Stiller, Sutton, Underhill, Vinson, Weiss, Wiley, and Wray.	
Referred to:	Judiciary IV.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO MAKE CHANGES TO OTHER STATUTES REGARDING SEX OFFENDERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), 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), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation

or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10 year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(a2) A person required to register pursuant to subsection (a) of this section and who is employed or carries on a vocation in a county in the State other than the county in which the person resides, on a part-time or full-time basis, with or without compensation or government or educational benefit, for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, shall maintain registration with the sheriff of the county where the person works. In addition to the information required under subsection (b) of this section, the person shall

also provide information regarding the person's place of employment and the person's address in his or her county of residence."

SECTION 4.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) No fee shall be required to register when a person first registers as required under this section. After the initial registration required for an offense or offenses, a registrant shall pay a civil fee of one hundred dollars ($100.00) annually to the sheriff with whom the person is registered. If a registrant's county of registration changes prior to the annual due date of the fee, the registrant shall pay the fee at the time of registration in the new county and then annually thereafter. The fee shall be retained by the sheriff and shall be used by the sheriff for the administration of this Article. Inability to pay the required fee shall not relieve the person from the requirement to register pursuant to this section. Collection of unpaid fees shall be through civil process."

SECTION 5.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date.

SECTION 6.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(e) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, he or she shall report in person to the sheriff of the new county as well as the sheriff of the county from which the person had last registered not later than the tenth day after moving to the new county and provide written notice of the new address. ~~the~~ When the Division receives information that a person is moving from one county to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. The person shall report in person to provide the written notice. Upon receipt of the notice, the sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division."

SECTION 7.(b) This section becomes effective December 1, 2006.

SECTION 8.(a) G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

(a) The information in the county registry shall be verified annually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, the Division shall mail a nonforwardable verification form to the last reported address of the ~~person.~~person and shall also notify the sheriff of the county of the offender's last reported address that the verification form has been mailed.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) The person shall include a current photograph of himself or herself with the verification form. The photograph must be easy to view and must provide a true and accurate likeness of the offender. If, in the sheriff's discretion, the photograph does not satisfy that criterion then the sheriff may take a photograph of the offender to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the

sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) A sheriff may require that a person verify his or her information in the sex offender registry more frequently than required by this Article. A sheriff may also require that a person provide an updated photograph of himself or herself, if, in the sheriff's discretion, the current photograph is difficult to view or no longer provides a true and accurate likeness of the person. If the person refuses to provide a photograph, then the sheriff may take a photograph of the person to be included with the person's registration information."

SECTION 8.(b) This section becomes effective December 1, 2006.

SECTION 9.(a) G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to ~~register.~~register as required by this Article.

(2) Fails to notify the last registering sheriff of a change of ~~address.~~address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education."

SECTION 9.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Termination of registration requirement.**

(a) The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has complied with the provisions of this Article during the 10-year registration period and the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

(c) If a person failed to comply with the provisions of this Article during the 10-year registration period, the District Attorney in the jurisdiction in which the person resides or the Attorney General may petition the court not to terminate the registration requirement and to require the person to continue to maintain registration under the provisions of this Article for an additional 10-years. If the court finds that the person has

willfully failed to comply with the provisions of this Article during the 10-year registration period, the court may grant the petition not to terminate the registration and shall enter an order requiring the person to continue to maintain the registration requirements for an additional period of 10 years."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.16. Residential and work restrictions.**

(a) A person required to register under this Part, or Part 2 of this Article, shall not knowingly reside or work within 1,000 feet of the property on which any public school, private or parochial school, licensed day care center, any other child care facility, public swimming pool, or private swimming pool is located.

(b) As used in this section, 'school' does not include institutions of higher education.

(c) As used in this section, 'private swimming pool' does not include swimming pools located at a private residence.

(d) This section does not apply to licensed day care centers or other child care facilities that are located on, or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

(e) Changes in the ownership or use of a person or entity that occupies property within 1,000 feet of a registrant's registered address, which occur after a registrant establishes residency or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section. For purposes of this subsection, residency is established when the registrant purchases the residency or enters into a written lease contract for the residency.

(f) Violation of this section is a Class F Felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date. This section does not apply to persons who have established a residence prior to the effective date of this act by purchasing the residency or entering into a written lease contract for the residency. Residences established through a written lease contract prior to the effective date of this act may not be continued beyond the definite period of time specified in the lease at its execution.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(5) 'Sexual contact' means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, ~~or~~ (ii) a person touching another person with their own sexual organ, anus, breast, groin, or ~~buttocks.~~buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1965

Corrected Copy 5/16/06

Senate Judiciary I Committee Substitute Adopted 6/22/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1965-PCS10651-LB-172

Short Title: Eminent Domain Restrictions. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE STATUTORY PURPOSES FOR WHICH EMINENT DOMAIN MAY BE USED BY PRIVATE CONDEMNORS, LOCAL PUBLIC CONDEMNORS, AND OTHER PUBLIC CONDEMNORS, AND FOR CERTAIN REVENUE BOND PROJECTS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-1 reads as rewritten:

"**§ 40A-1. Exclusive provisions.**

(a) Notwithstanding the provisions of any local act, it is the intent of the General Assembly that, effective July 1, 2006, the uses set out in G.S. 40A-3 are the exclusive uses for which the authority to exercise the power of eminent domain is granted to private condemnors, local public condemnors, and other public condemnors. Effective July 1, 2006, a local act granting the authority to exercise the power of eminent domain to a private condemnor, local public condemnor, or other public condemnor for a use or purpose other than those granted to it in G.S. 40A-3(a), (b), (b1), or (c) is not effective for that use or purpose. Provided that, any eminent domain action commenced before July 1, 2006, for a use or purpose granted in a local act, may be lawfully completed pursuant to the provisions of that local act. The provisions of this subsection shall not repeal any provision of a local act limiting the purposes for which the authority to exercise the power of eminent domain may be used.

(b) It is the intent of the General Assembly that the procedures provided by this Chapter shall be the exclusive condemnation procedures to be used in this State by all private condemnors and all local public condemnors. All other provisions in laws, charters, or local acts authorizing the use of other procedures by municipal or county governments or agencies or political subdivisions thereof, or by corporations,

associations or other persons are hereby repealed effective January 1, 1982. Provided, that any condemnation proceeding initiated prior to January 1, 1982, may be lawfully completed pursuant to the provisions previously existing.

(c) This ~~chapter~~ Chapter shall not repeal any provision of a local act ~~enlarging or~~ limiting the purposes for which property may be condemned. Notwithstanding the language of G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act creating any substantive or procedural requirement or limitation on the authority of a local public condemnor to exercise the power of eminent domain outside of its boundaries."

SECTION 2. G.S. 40A-3 reads as rewritten:

"**§ 40A-3. By whom right may be exercised.**

(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:

a. Not be less than 50 feet nor more than 100 feet in width; and

b. Comply with the provisions of G.S. 62-190(b).

The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.

(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of

its lines already in operation not more than six miles apart; or constructing an industrial siding.

(5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors – Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

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(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

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(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(c) Other Public Condemnors. – For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.

(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.

(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.

(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article,

provided, however, that the provisions of G.S. 139-38 shall continue to apply.

(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.

(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.

(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.

(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article.

(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.

(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.

(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.

(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.

(13) A regional public transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter."

SECTION 2.1. G.S. 160A-503 is amended by adding a new subdivision to read:

"(2a) 'Blighted parcel' shall mean a parcel on which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no parcel shall be considered a blighted parcel nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that the parcel is blighted."

SECTION 2.2. G.S. 160A-503(2) reads as rewritten:

"(2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area ~~nor subject to the power of eminent domain,~~ within the meaning of this Article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, it may only be exercised to take a blighted parcel as defined in subdivision (2a) of this section, and the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners."

SECTION 2.3. G.S. 160A-512(6) reads as rewritten:

"**§ 160A-512. Powers of commission.**

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to those herein otherwise granted:

...

(6) its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment ~~project;~~ project, except that eminent domain may only be used to take a blighted parcel; to hold, improve, clear or prepare for redevelopment any such property, and subject to the provisions of G.S. 160A-514, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area,

nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the Commission (although disposition of the property is still subject to G.S. 160A-514), with "redevelopers" of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this Article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this Article;

..."

SECTION 2.4. G.S. 160A-515 reads as rewritten:

"**§ 160A-515. Eminent domain.**

The commission may exercise the right of eminent domain in accordance with the provisions of Chapter ~~40A.~~ 40A, but only where the property to be taken is a blighted parcel."

SECTION 3. G.S. 159-83(a)(1) reads as rewritten:

"(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to July 1, 2006."

SECTION 4. This act becomes effective July 1, 2006.

PENDING - DO NOT REMOVE

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1965

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

H1965-ALB-177 [v.1]

Date 4/26 ,2006

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

Senator Berger of Rockingham

further moves to amend the bill on page 6, line 21, by adding the following between lines 21 and 22:

"**SECTION 2.1.** G.S. 160A-503 is amended by adding a new subdivision to read:

"(2a) 'Blighted parcel' shall mean a parcel on which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no parcel shall be considered a blighted parcel nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that the parcel is blighted."

SECTION 2.2. G.S. 160A-503(2) reads as rewritten:

"(2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in

character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area ~~nor subject to the power of eminent domain,~~ within the meaning of this Article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, it may only be exercised to take a blighted parcel as defined in subdivision (2a) of this section, and the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

"**SECTION 2.3.** G.S. 160A-512(6) reads as rewritten:

'**§ 160A-512. Powers of commission.**

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to those herein otherwise granted:

. . . . .

(6) its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment ~~project;~~ project, except that eminent domain may only be used to take

a blighted parcel; to hold, improve, clear or prepare for redevelopment any such property, and subject to the provisions of G.S. 160A-514, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the Commission (although disposition of the property is still subject to G.S. 160A-514), with "redevelopers" of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this Article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this Article;

. . . . .'

SECTION 2.4. G.S. 160A-515 reads as rewritten:

"**§ 160A-515. Eminent domain.**

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1965

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

H1965-ALB-177 [v.1]

The commission may exercise the right of eminent domain in accordance with the provisions of Chapter ~~40A~~ 40A, but only where the property to be taken is a blighted parcel."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 1965

Short Title:	Eminent Domain Restrictions.	(Public)
Sponsors:	Representatives Goforth, Sherrill (Primary Sponsors); Almond, L. Allen, Brown, Clary, Culp, Grady, Harrison, Jones, Justice, Justus, Martin, McGee, Preston, Rapp, Ray, Setzer, Stiller, Walend, and Wiley.	
Referred to:	Judiciary III.	

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE STATUTORY PURPOSES FOR WHICH EMINENT DOMAIN MAY BE USED BY PRIVATE CONDEMNORS, LOCAL PUBLIC CONDEMNORS, AND OTHER PUBLIC CONDEMNORS, AND FOR CERTAIN REVENUE BOND PROJECTS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-1 reads as rewritten:

"**§ 40A-1. Exclusive provisions.**

(a) Notwithstanding the provisions of any local act, it is the intent of the General Assembly that, effective July 1, 2006, the uses set out in G.S. 40A-3 are the exclusive uses for which the authority to exercise the power of eminent domain is granted to private condemnors, local public condemnors, and other public condemnors. Effective July 1, 2006, any local act granting the authority to exercise the power of eminent domain to a private condemnor, local public condemnor, or other public condemnor for a use or purpose other than those granted to it in G.S. 40A-3 is repealed. Provided that, any eminent domain action commenced before July 1, 2006, for a use or purpose granted in a local act, may be lawfully completed pursuant to the provisions of that local act. The provisions of this subsection shall not repeal any provision of a local act limiting the purposes for which the authority to exercise the power of eminent domain may be used.

(b) It is the intent of the General Assembly that the procedures provided by this Chapter shall be the exclusive condemnation procedures to be used in this State by all private condemnors and all local public condemnors. All other provisions in laws, charters, or local acts authorizing the use of other procedures by municipal or county governments or agencies or political subdivisions thereof, or by corporations, associations or other persons are hereby repealed effective January 1, 1982. Provided, that any condemnation proceeding initiated prior to January 1, 1982, may be lawfully completed pursuant to the provisions previously existing.

(c) This chapter shall not repeal any provision of a local act ~~enlarging or~~ limiting the

purposes for which property may be condemned. Notwithstanding the language of G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act creating any substantive or procedural requirement or limitation on the authority of a local public condemnor to exercise the power of eminent domain outside of its boundaries."

SECTION 2. G.S. 40A-3 reads as rewritten:

"**§ 40A-3. By whom right may be exercised.**

(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:

a. Not be less than 50 feet nor more than 100 feet in width; and

b. Comply with the provisions of G.S. 62-190(b).

The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.

(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding.

(5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the

Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors – Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

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(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

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(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power

of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(c) Other Public Condemnors. – For the public use or benefit, the following political

entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.

(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.

(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.

(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.

(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.

(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.

(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.

(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article.

(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.

(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.

(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.

(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.

(13) A regional public transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter."

SECTION 3. G.S. 159-83(a)(1) reads as rewritten:

" (1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to July 1, 2006."

SECTION 4. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **6**

HOUSE BILL 88

Committee Substitute Favorable 3/28/05
Committee Substitute #2 Favorable 8/23/05
Fourth Edition Engrossed 8/24/05
Senate Judiciary I Committee Substitute Adopted 7/19/06
Sixth Edition Engrossed 7/20/06

Short Title: Electoral Fairness Act. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO EXTEND FILING FEE PROVISIONS TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ~~ten~~ two percent ~~(10%)~~ (2%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political

party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party."

SECTION 2. G.S. 163-97 reads as rewritten:

"**§ 163-97. Termination of status as political party.**

When any political party fails to ~~poll for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors at a general election,~~ meet the test set forth in G.S. 163-96(a)(1), it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter."

SECTION 3. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ~~ballots.~~ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates ~~for State, congressional, and national offices~~ in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

SECTION 4. G.S. 163-122(a)(1) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of ~~registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held.~~voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state

that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

...."

SECTION 5. G.S. 163-122 is amended by adding a new subsection to read:

"(d) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1."

SECTION 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the

county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 7. This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.

Final Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 88

Committee Substitute Favorable 3/28/05
Committee Substitute #2 Favorable 8/23/05
Fourth Edition Engrossed 8/24/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H88-PCS60875-RRf-72

Short Title: Electoral Fairness Act. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO EXTEND FILING FEE PROVISIONS TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ~~ten~~ two percent ~~(10%)~~ (2%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the

petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party."

SECTION 2. G.S. 163-97 reads as rewritten:

"**§ 163-97. Termination of status as political party.**

When any political party fails to poll for both its candidate for ~~governor, or~~ governor and its candidates for presidential electors, at least ~~ten~~ two percent ~~(10%)~~ (2%) of the entire vote cast in the State for ~~governor or for presidential electors~~ the office at a general election, it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter."

SECTION 3. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ~~ballots.~~ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates ~~for State, congressional, and national offices~~ in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

SECTION 4. G.S. 163-122(a)(1) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of ~~registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general~~

~~election is to be held.~~voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

...."

SECTION 5. G.S. 163-122 is amended by adding a new subsection to read:

"(d) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1."

SECTION 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including:	Appropriate district executive committee of

Member of the United States House of Representatives District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 7. This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 88

Committee Substitute Favorable 3/28/05
Committee Substitute #2 Favorable 8/23/05
Fourth Edition Engrossed 8/24/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H88-CSRRf-72 [v.1]

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Short Title: Electoral Fairness Act. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO EXTEND FILING FEE PROVISIONS TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME YEAR.

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(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the

petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party."

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"**§ 163-97. Termination of status as political party.**

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SECTION 3. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ~~ballots.~~ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates ~~for State, congressional, and national offices~~ in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

SECTION 4. G.S. 163-122(a)(1) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of ~~registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general~~

~~election is to be held.~~voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

...."

SECTION 5. G.S. 163-122 is amended by adding a new subsection to read:

"(d) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1."

SECTION 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including:	Appropriate district executive committee of

Member of the United States House of Representatives District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 7. This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.

Restore House Bill 88!

More Voices = Better Democracy

REDUCE THE SIGNATURE REQUIREMENT

RESTORE HB 88 TO VERSION THREE - THE VERSION THAT PASSED TWO NC HOUSE COMMITTEES BY UNANIMOUS VOTE!

RESTORE THE SIGNATURE REQUIREMENT FROM 2% (CURRENT) TO 0.5% TODAY!

What are other states' signature requirements for third parties?

- Twenty-one states require 10,000 signatures or fewer.
- Nine states require 5,000 signatures or fewer.
- South Carolina requires 10,000 signatures for parties or independents.

State	Signatures
Minnesota	141,420
California	77,389
North Carolina	69,734
Colorado	1,000
Louisiana	1,000
Hawaii	648
Mississippi	0
Florida	0

For more information visit
www.NCOpenElections.org

The NC Open Elections Coalition to reform NC's ballot access laws is endorsed by:

NC League of Women Voters
Democracy NC
NC PIRG
Common Cause
NC ACLU
Southerners for Economic Justice
Muslim American Public Affairs Council
A.C.O.R.N.
NC Green Party
NC Libertarian Party
NC Constitution Party

...and hundreds of citizens across North Carolina

- At 69,734 required signatures, North Carolina has the third highest signature requirements in the nation.

- The NC Open Elections Coalition has collected more than 700 signatures in six weeks in support of the restored version of HB88. Signatures came from citizens in Transylvania, Yadkin, Wake, Mecklenburg, Dare, Buncombe, Pitt, and many more counties.

- No third party has been able to collect the required signatures through grassroots efforts. It has often cost parties $100,000 and nine months of professional petitioning.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 88

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

H88-ARR-141 [v.1]

Date 7-19 ,2006

Comm. Sub. [YES]
Amends Title [YES]
H88-CSRRf-72

Senator Berger of Rockingham

moves to amend the bill on page 1, line 2,
by inserting at the end of that line the following:
"NEW PARTY AND A"; and

on page 1, line 22,
by deleting the term "two percent (2%)" and substituting the term "~~two percent (2%)~~ one half of one percent (0.5%)"; and

on page 2, line 42,
by deleting the term "two percent (2%)" and substituting the term "~~two percent (2%)~~ one half of one percent (0.5%)"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

Final Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 966
PROPOSED SENATE COMMITTEE SUBSTITUTE H966-PCS50778-RR-79

Short Title: Candidate-Specific Communications. (Public)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE DISCLOSURE OF CANDIDATE-SPECIFIC COMMUNICATIONS.

The General Assembly of North Carolina enacts:

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

"Article 22G.

"Candidate-Specific Communications.

"**§ 163-278.100. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is made in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.

c. Is targeted to the relevant electorate.

(2) The term "candidate-specific communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

e. An electioneering communication as defined in Article 22E of this Chapter.

(3) The term "disclosure date" means either of the following:

a. The first date during any calendar year when a candidate-specific communication is aired after an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and 2,500 or more individuals in the district in the case of a candidacy for General Assembly.

(5) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article.

"**§ 163-278.101. Disclosure of candidate-specific communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or airing candidate-specific communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that

entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The candidates in the candidate-specific communications that are identified or are to be identified.

(5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of five thousand dollars ($5,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(c) Creating Multiple Organizations. – It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article.

"**§ 163-278.102. Penalties.**

The State Board of Elections has the same authority to compel from any organization covered by this Article the disclosures required by this Article that the Board has to compel from a political committee the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 2. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22H.

"Mass Mailings and Telephone Banks: Candidate-Specific Communications.

"**§ 163-278.110. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is made in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.

c. Is targeted to the relevant electorate.

(2) The term "candidate-specific communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

f. An electioneering communication as defined in Article 22F of this Chapter.

g. An objective public opinion poll.

(3) The term "disclosure date" means either of the following:

a. The first date during any calendar year when a candidate-specific communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term "mass mailing" means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant electorate" means:

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

"**§ 163-278.111. Disclosure of candidate-specific communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or transmitting candidate-specific communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The candidates in the candidate-specific communications that are identified or are to be identified.

(5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of five thousand dollars ($5,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(c) Creating Multiple Organizations. – It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article.

"**§ 163-278.112. Penalties.**

The State Board of Elections has the same authority to compel from any organization covered by this Article the disclosures required by this Article that the Board has to compel from a political committee the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 4. This act becomes effective January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 966

Short Title:	Durham Precincts.	(Local)
Sponsors:	Representatives Miller and Luebke (Primary Sponsors).	
Referred to:	Local Government I.	

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE DURHAM COUNTY BOARD OF ELECTIONS TO MOVE TWO PRECINCT BOUNDARIES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 163-132.3, the Durham County Board of Elections may revise the precincts of Durham County as follows:

(1) Move from Precinct 11 to Precinct 49 the area bounded by Concord Street, East Lawson Street, Fayetteville Street, and Formosa Avenue, and consisting of 2000 Census blocks 1006 and 1014 of Tract 13.03.

(2) Move from Precinct 53 to Precinct 27 the area bounded by N.C. 54, the common municipal boundaries of the cities of Chapel Hill and Durham, Barbee Chapel Road, Farrington Mill Road, and the Durham County line, and consisting of 2000 Census blocks 1029, 1031, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1050, and 1998 of Tract 20.12.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 966

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

H966-ARR-169 [v.1]

Date 7-19 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H966-CSRR-79

Senator RAND

moves to amend the bill on page 1, line 19,
by inserting before the period the following:

", excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b."; and

on page 3, line 37,
by inserting before the period the following:

", excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b."

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 966 DATE 7-19-06

S. B. No. _____ Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H966-CSRR-79 [v.2]

Rep.) RAND
Sen.)

moves to amend the bill on page 4, line 16

( ) WHICH CHANGES THE TITLE

by BY ADDING THE FOLLOWING

"g. AN OBJECTIVE PUBLIC OPINION POLL."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 966:
Candidate-Specific Communications

BILL ANALYSIS

Committee:	Senate Judiciary I	**Date:**	July 18, 2006
Introduced by:	Reps. Miller, Luebke	**Summary by:**	William R. Gilkeson
Version:	H966-CSRR-79		Committee Counsel

SUMMARY: ***This PCS for House Bill 966 would provide for disclosure of "candidate-specific communications." The disclosure would be similar to what current law provides, and what recently ratified H 1847 would provide, for "electioneering communications." A candidate-specific communication is one that fits the definition of electioneering communication except that it occurs outside the window of 60 days before an election or 30 days before a primary. Unlike the regulation of electioneering communications, this bill provides only for disclosure of expenditures for the candidate-specific communication. It does not prohibit the use of corporate or union funds for it. Unlike for electioneering communications, there is no criminal penalty in the bill – only civil remedies. Effective January 1, 2007.***

CURRENT LAW; Electioneering communications are governed by Articles 22E and 22F of Chapter 163 of the General Statutes. They are patterned after Congress's Bipartisan Campaign Reform Act (BCRA), also known as McCain-Feingold. The relevant parts of that act were upheld by the US Supreme Court in *McConnell v. FEC*, 540 US 93 (2003). Article 22E governs electioneering communications by broadcast, cable or satellite. Article 22F governs electioneering communications by mass mailings and telephone banks. The two Articles have parallel parts, dealing with definitions, disclosure, prohibited sources, and penalties.

Definitions.

"Electioneering communication." In both the broadcast and the mail/phone Articles, an "electioneering communication" is a communication that refers to a clearly identified candidate for statewide office or General Assembly, is made either 30 days before a primary or 60 days before a general election, and is "targeted to the relevant electorate." Certain types of communication are exempted. ***H 1847 did not change those basic elements of the definition.***

"Targeted to the Relevant Electorate." A broadcast, cable or satellite electioneering communication is "targeted to the relevant electorate" if it can be received by 50,000 persons for a statewide office or 7,500 persons within the district for a General Assembly race. For mass mailings and telephone banks, the message is "targeted to the relevant electorate" if it is transmitted by the transmission of "identical or substantially similar" matter to 50,000 persons for a statewide office or 5,000 persons within the district for a General Assembly race. ***H 1847 dropped the threshold for mail and phone for legislative districts to 2,500, and restated the definition to say that it applied to communications transmitted to cumulative total of the threshold number, identifying one or more candidates in the same race within a 30-day period.***

"Mass mailings." Defined as "any mailing by United States mail or facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list." ***H 1847 removed the requirement that it be made by a commercial vendor.***

Disclosure. If an entity is producing and communicating an electioneering communication, the entity is required to report the expenditures following the "disclosure date," the first date in a calendar year when an electioneering communication is aired or transmitted after that entity has made disbursements in excess of $10,000 and any subsequent date when it reaches another $10,000. The report must show disbursements in excess of $1,000 and the names of contributors of more than $1,000. ***H 1847 set the trigger for disclosure, not at when disbursements are made, but when expenses are incurred.***

Prohibited Sources. In producing and communicating an electioneering communication, prohibited sources are not allowed to make disbursements for electioneering communications. Prohibited sources are corporations, labor unions, and professional associations. ***Both current law and H 1847 have provisions to keep prohibited source money out of electioneering communications.***

Penalties. Violations are similar to those of Article 22A, the regular campaign finance chapter: Class 2 misdemeanor and civil penalties. ***H 1847 did not amend the penalties sections concerning electioneering communications.***

BILL ANALYSIS: The bill would add two new Articles to Chapter 163, Article 22G regulating "candidate-specific communications" in broadcast, cable, and satellite, and Article 22H regulating them in mass mailings and telephone banks. "Candidate-specific communications" are the same as electioneering communications, except for the time period when they occur. To be an electioneering communication, a message must be made 60 days before an election or 30 days before a primary. To be a candidate-specific communication, the communication must be made in an even-numbered year after the last day candidates may file for a partisan primary or a judicial office. That is set as the last day in February.

(The time period for a candidate-specific communication runs through general election day, but since electioneering communications are exempt from the candidate-specific definition, so the regulation during that period would be under the electioneering statute.)

The sole aspect of candidate-specific communication regulation is disclosure. The differences between how the two kinds of communication are regulated are as follows:

1. There is no prohibition on any source making candidate-specific communications. Organizations spending for candidate-specific communications do not have to do so out of a segregated fund that excludes certain expenditures.
2. There is no criminal penalty in the candidate-specific communications articles. The electioneering articles impose a Class 2 misdemeanor for violations. The candidate-specific articles rely on civil remedies.
3. The candidate-specific disclosure statement has a higher threshold for identifying contributors. The electioneering communications contributors must be disclosed if they provided over $1,000. For candidate-specific contributors, that threshold is $5,000.

EFFECTIVE DATE: January 1, 2007.

BACKGROUND: As introduced by Reps. Miller and Luebke, H 966 concerned precincts in Durham.

H0966H966-CSRR-79-SMRR

From: Joyce Hodge (Senate LA Director)
Sent: Wednesday, July 19, 2006 8:17 PM

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 20, 2006	TO BE ANNOUNCED	1027 LB

The following will be considered: Meeting CANCELLED

BILL NO.	SHORT TITLE	SPONSOR
	2006 TECHNICAL CORRECTIONS BILL	

Senator Daniel G. Clodfelter, Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 27, 2006	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1843	State Government Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1844	Executive Branch Ethics Act - 1.	Representative Brubaker Representative Hackney Representative Howard Representative Luebke
HB 1846	2006 Campaign Finance Changes.	Representative Ross Representative Hackney Representative Howard Representative Eddins
HB 126	Gun Permit/OSHA Technical Changes.	Representative Preston Representative Insko

Senator Daniel G. Clodfelter, Chair